

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2051.

661

CHARLES H. MERILLAT AND MASON N. RICHARDSON,
TRUSTEES, APPELLANTS,

vs.

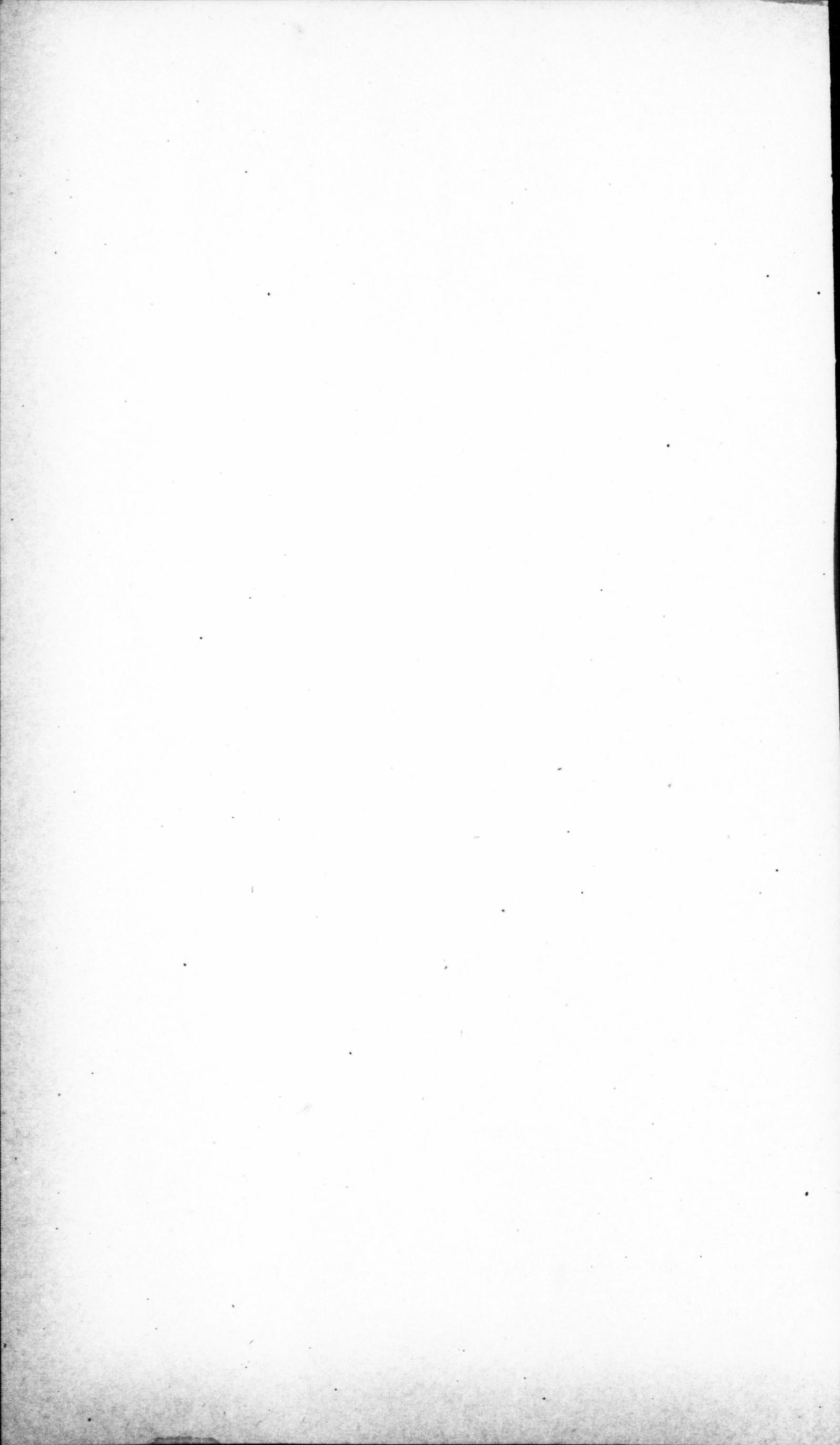
CYRUS BUSSEY, INTERVENOR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED AUGUST 6, 1909.

Feb. 3.





COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1909.

No. 2051.

CHARLES H. MERILLAT AND MASON N. RICHARDSON,
TRUSTEES, APPELLANTS,

vs.

CYRUS BUSSEY, INTERVENOR, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

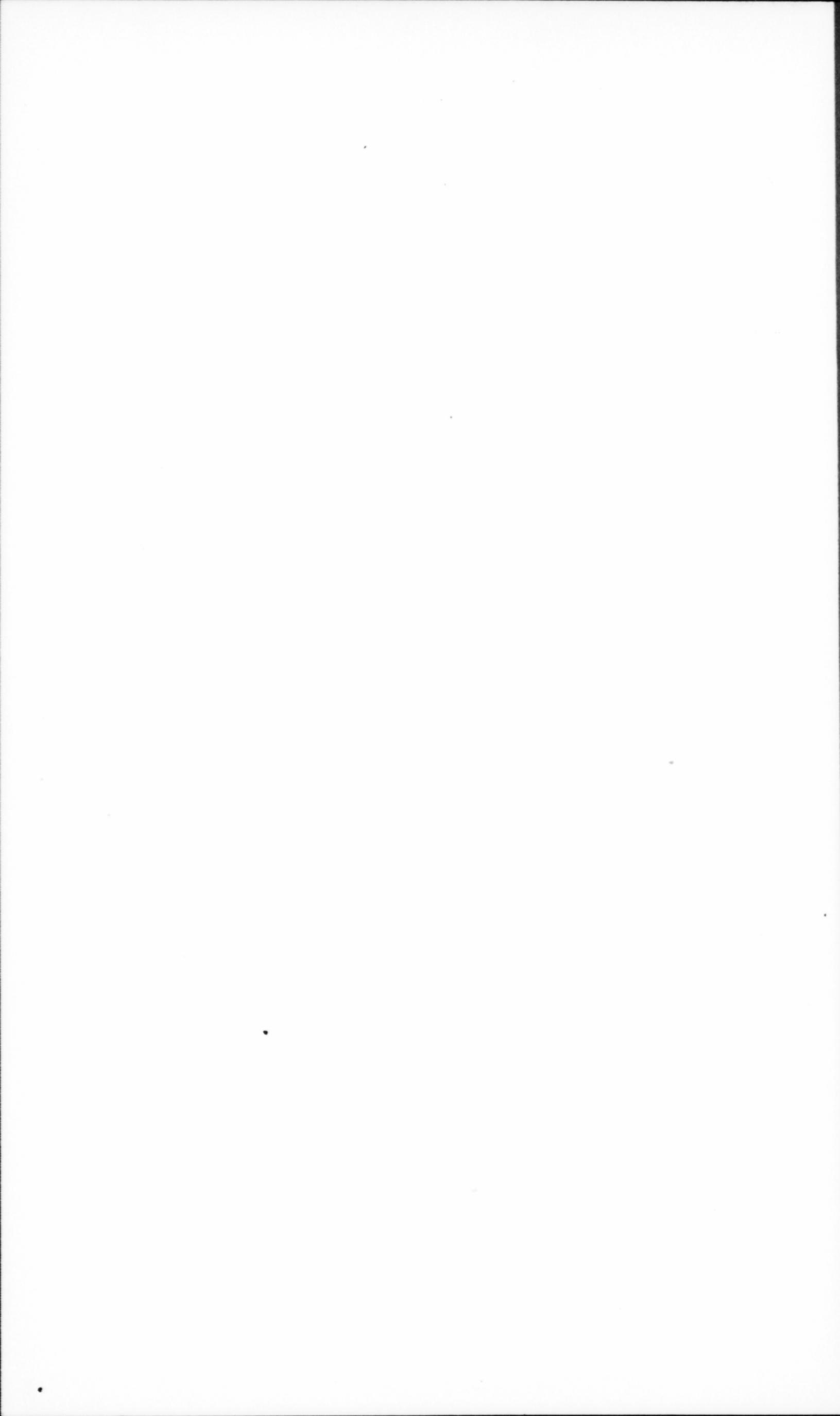
	Original.	Print.
Caption.....	<i>a</i>	1
Suggestion of death of Thomas G. Hensey and naming new parties.	1	1
Petition of Cyrus Bussey.....	1	2
"Exhibit A"—Stipulation.....	4	3
Order referring cause to auditor.....	5	4
Creditors' bill in equity cause 26121.....	6	4
Substituted auditor's report.....	11	7
Testimony before auditor.....	34	18
Original subscription of Ten Syndicate.....	34	18
Testimony of Mellen C. Hooker.....	37	20
Direct examination.....	37	20
Cyrus Bussey.....	42	22
Direct examination.....	42	22
Edwin Williamson.....	57	30
Direct examination.....	57	30
Daniel B. Weedon.....	59	31
Direct examination.....	59	31
Benjamin LeFevre.....	60	31
Direct examination.....	60	31
Melville D. Hensey.....	64	34
Direct examination.....	64	34
William B. Hibbs.....	69	36
Direct examination.....	69	36

	Original.	Print.
Testimony of Cyrus Bussey (recalled).....	70	36
Direct examination.....	70	36
Affidavit of Cyrus Bussey and Thomas G. Hensey.....	76	40
Testimony of Charles H. Merillat.....	77	40
Direct examination.....	77	40
Simon Lyon.....	79	41
Direct examination.....	79	41
Fred G. Rose.....	83	43
Direct examination.....	83	43
Cross-examination..	85	44
E. J. Pullman.....	87	45
Direct examination.....	87	45
Edwin L. Wilson.....	94	48
Direct examination.....	94	48
Cross-examination ..	96	50
Frank McClelland.....	97	50
Direct examination.....	97	50
Mellen C. Hooker.....	98	51
Direct examination.....	98	51
J. A. Lynham.....	104	54
Direct examination.....	104	54
Joseph Paul.....	106	54
Direct examination.....	106	54
Daniel Weedon.....	107	55
Direct examination.....	107	55
William E. Edmonston.....	112	57
Direct examination.....	112	57
Melville D. Hensey.....	114	58
Direct examination.....	114	58
Percy E. Budlong.....	121	62
Direct examination.....	121	62
J. A. Lynham (recalled).....	123	63
Direct examination.....	123	63
Bill in equity cause No. 24084.....	127	65
Motion for leave to amend	142	79
Amendment to bill.....	143	80
Decree in equity cause No. 24084	147	82
Order appointing M. N. Richardson trustee vice E. H. Thomas, trustee.....	152	87
Extracts from ledger entries of Thomas G. Hensey, pages 398 and 400.....	153	88
Certificate of stock of Thomas G. Hensey.....	155	89
Certificates of Le Droit Park Syndicate, with endorsements thereon.	158	90
Exhibit No. 1—Deed from Melville D. Hensey to Bussey and Hensey.....	162	92
No. 2—Collateral note of W. H. Hills.....	167	95
No. 3—Collateral note of M. C. Hooker.....	169	95
No. 4—Promissory note of Thos. G. Hensey for \$900...	171	96
No. 5—Statement.....	172	97
No. 6—Settlement by Thos. G. Hensey with General Cyrus Bussey.....	175	99
Exhibit W. E. L. No. 1—Promissory note, collateral security, of W. E. Leonard	176	99

INDEX.

III

	Original.	Print.
Extracts from testimony of defendant in original cause No. 24084, equity.....	178	100
Testimony of Thomas G. Hensey.....	178	100
Cross-examination.....	178	100
Extracts from check stub books of Mellen C. Hooker.....	189	105
Exhibit J. Paul No. 1—Receipt.....	190	105
No. 2—Receipt.....	190	105
No. 3—Receipt.....	190	106
Promissory note of Melville D. Hensey for \$822.....	191	106
Exhibit T. G. Hensey No. 1—Promissory note of Thos. G. Hensey and Cyrus Bussey for \$4,000.....	192	106
Exhibit T. G. Hensey No. 2—Promissory note of Thos. G. Hensey and Cyrus Bussey for \$4,000.....	193	107
Exhibit T. G. H. No. 3—Promissory note of Melville D. Hensey for \$1,500.....	194	107
Exhibit T. G. H. No. 4—Promissory note of Melville D. Hensey for \$1,500.....	195	108
Exhibit T. G. H. No. 5—Promissory note of Melville D. Hensey for \$2,500.....	196	109
Exhibit T. G. H. No. 6—Promissory note of Melville D. Hensey for \$2,000.....	197	110
Exhibit T. G. H. No. 7—Promissory note of Melville D. Hensey for \$2,000.....	198	111
Copy of check for five hundred and twenty-three dollars and eighty-one cents of J. D. Coughlin to Thomas G. Hensey and Cyrus Bussey, trustees.....	199	112
Exhibit M. D. H. No. 1—Schedule of expenditures.....	200	112
Exhibit M. D. H. No. 2—Schedule.....	201	113
Exhibit T. H. G. No. 9—Statement of taxes paid.....	203	114
Memorandum from records in office of recorder of deeds showing title.....	204	115
Affidavit of Cyrus Bussey and Thos. G. Hensey.....	206	116
Exceptions to report of auditor.....	207	117
Opinion of the court by Justice Wright.....	224	125
Decree ratifying report of auditor.....	226	126
Appeal noted and penalty of appeal bond fixed.....	227	127
Memorandum: Appeal bond approved and filed.....	227	127
Memorandum: Time in which to file transcript of record in Court of Appeals extended.....	227	127
Docket entries.....	228	127
Directions to clerk for preparation of transcript of record.....	229	128
Clerk's certificate.....	233	130



In the Court of Appeals of the District of Columbia.

No. 2051.

CHAS. H. MERILLAT et al., Trustees, Appellant,
vs.
CYRUS BUSSEY, Intervenor.

a Supreme Court of the District of Columbia.

Equity. No. 24084.

CHARLES W. RICHARDSON, JOSEPH W. LITTLE, MARY B. CUMMINGS,
W. A. Bevard, F. H. Chittenden, Francis E. Grice, B. Richards,
Mary A. Heinz, George C. Esher, Alice Titcomb, William H.
Brittain, Paul E. Heinz

vs.

MELLEN C. HOOKER, MELVILLE D. HENSEY, DANIEL B. WEEDEN,
RUTH B. HENSEY.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 *Suggestion of Death of Thomas G. Hensey & Naming New Parties.*

Filed May 2, 1907.

In the Supreme Court of the District of Columbia, Holding an Equity Court for Said District.

Equity. No. 24084.

CHARLES W. RICHARDSON et al.
vs.
THOMAS G. HENSEY et al.

And now come the complainants by their Solicitors and suggest to the Court that the defendant Thomas G. Hensey departed this

life in the City of Washington, District of Columbia, on the 27 of November, 1906, and Daniel B. Weeden was duly heretofore, to wit: on the 12 day of March 1907, appointed administrator c. t. a. of his estate and he has duly qualified, and by his last will and testament, which has been admitted to probate and record, Ruth B. Hensey is named as his sole devisee and residuary legatee, and said Daniel B. Weeden and said Ruth B. Hensey are necessary parties to this cause.

CHARLES H. MERILLAT,
MASON N. RICHARDSON,
Solicitors for Complainants.

Petition.

Filed May 3, 1907.

In the Supreme Court of the District of Columbia.

Equity. 24084.

RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

2 The petition of Cyrus Bussey respectfully represents:

1. That on the 5th day of April, A. D. 1906, Thomas G. Hensey and your petitioner as trustees for certain shareholders in what is known as the Ten Syndicate entered into a stipulation with Charles H. Merillat, attorney for the complainants herein, to have the proceeds of the sale of land known as Lots 11 and 12, Block 12, Le Droit Park, owned by the said Ten Syndicate, and the notes for the unpaid purchase money deposited with the Columbia Title Company, of Washington, in the District of Columbia, a copy of said stipulation being hereto attached and marked "Exhibit A."

2. That the said Thomas G. Hensey, one of the trustees for the shareholders in what is known as the Ten Syndicate, died at Washington, in the District of Columbia, on the 27th day of November, 1906.

3. That your petitioner as the surviving trustee of said Syndicate is informed that the notes given for the unpaid purchase money of the real estate referred to have been paid and that the money is now in possession of said Columbia Title Company, amounting to \$5380.17.

4. That your petitioner believes that said fund ought to be distributed under the order of this Honorable Court and believes that it will be best for all the parties in interest that this matter be referred to the Auditor of the Court for the purpose of determining

3 the amount due each of the shareholders in what is known as the Ten Syndicate or otherwise, growing out of the sale hereinbefore mentioned.

Wherefore your Petitioner prays that this Honorable Court pass

an order referring this cause to the Auditor for the purpose herein mentioned.

CYRUS BUSSEY.

LYON & LYON,
Att'ys for Petitioner.

DISTRICT OF COLUMBIA,
City of Washington:

Personally appeared before me, a Notary Public in and for the aforesaid City and District, Cyrus Bussey, who being duly sworn according to law, states: That he has read the Petition by him subscribed and knows the contents thereof, that the facts therein stated upon personal knowledge are true and that the facts therein stated upon information and belief he believes to be true.

CYRUS BUSSEY.

Subscribed and sworn to before me, a Notary Public, on this 17th day of April, A. D. 1907.

[SEAL.]

GEORGE W. SMITH,
Notary Public.

4

"EXHIBIT A."

Stipulation.

It is this 5th day of April, A. D. 1906, stipulated and agreed between counsel for complainants in Equity Cause 26121 and Thomas G. Hensey and Cyrus Bussey trustees for shareholders in what is known as the Ten Syndicate,

First. The complainants agree to the passage of the title by the Columbia Title Company, released from the operation of the Equity Cause aforesaid and from any cloud of title arising therefrom.

Second. The said trustees agree to deposit with the Columbia Title Company the proceeds of the land and the notes for the unpaid purchase money.

Third. The complainant agrees upon satisfactory proof of the interest in said proceeds of any shareholders or their heirs or representatives not involved in Equity Cause 26121 or 24084; that such shareholders may receive the amounts properly due them or same shall be held until final determination of Equity Cause 26121 or 24084.

Fourth. That the interests of Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker in the Ten Syndicate whether the same be direct or indirect shall be retained by the Columbia Title Company until after final determination of Equity Cause 24084 and 26121.

(Signed)

CHAS. H. MERILLAT,
Attorney for Complainants.

(Signed)
(Signed)

CYRUS BUSSEY,
THOMAS G. HENSEY,
Trustees in Trust.

Supreme Court of the District of Columbia.

Friday, May 3, 1907.

The Court resumes its session pursuant to adjournment, Mr. Chief Justice Clabaugh presiding.

* * * * *

No. 24084, Equity Docket 54.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

Upon consideration of the petition of Cyrus Bussey herein filed, it is this 3rd day of May, A. D. 1907, ordered that this cause be and the same is hereby referred to the Auditor for the purpose of stating the distributive interest of each of the parties in the fund derived from the sale of the property of the Ten Syndicate, the Auditor in his report further to state and find what if any liability there is on the part of Cyrus Bussey and the other members of the said Ten Syndicate to the complainants in the above cause, or the trustees therein appointed, arising out of the fact that subsequently to the filing of the bill in the above cause and the amendments thereto, Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey were permitted to borrow money of the Ten Syndicate upon their interests therein, if it shall so appear, and also what if any liability the trustees of the Ten Syndicate have incurred for loaning the money of the said Syndicate at all to members of said syndicate upon their interest in said syndicate, if they so acted,

6 subsequent to the filing of said bill and amendments thereto.

HARRY M. CLABAUGH,

Chief Justice.

We consent:

MASON N. RICHARDSON.

Creditors' Bill.

Filed Mar. 13, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 26121.

CHARLES H. MERILLAT, EDWARD H. THOMAS, Trustees, Complainants,

vs.

THOMAS G. HENSEY, MELLEN C. HOOKER, MELVILLE D. HENSEY, CYRUS BUSSEY, Defendants.

The bill of complaint of the above named complainants, respectfully represents as follows:

1. That your complainants are citizens of the United States, and

residents of the District of Columbia, and they bring this suit as Trustees, for and on behalf of the members of what is known as the "Le Droit Park Land Syndicate," your complainants having been appointed such trustees by a decree of this Honorable Court passed in Equity Cause No. 24084, Charles W. Richardson et al., vs. Thomas G. Hensey, et al.

2. That to the best of complainants' information and belief, the defendants are residents of the District of Columbia and citizens of the United States; that Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey are sued in their own right, that Thomas G. Hensey is also sued as trustee of what is known as the "Ten Syndicate," which owns certain hereinafter described property, in Block 12 of Le Droit Park, in the District of Columbia. And Cyrus Bussey is sued as trustee with Thomas G. Hensey in the aforesaid Syndicate.

3. That by a decree passed in this Honorable Court in Equity Cause No. 24084 aforesaid, your complainants were appointed trustees for the shareholders in what is known as the Le Droit Park Land Syndicate, and in and by said decree it was adjudged ordered and decreed that Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker had obtained certain trust funds from members of said Le Droit Park Land Syndicate, and said cause was referred to the Auditor to determine the amount of said trust fund and the Auditor found said amount of said trust funds to be \$25896.00, and although the time within which exceptions under the rules of Court might be filed to said finding of the auditor has elapsed the said defendants Thomas G. Hensey, Melville D. Hensey, and Mellen C. Hooker have not excepted thereto as to the amount found but have endeavored to except as to matters already res adjudicata under the decree passed by this Court, namely, that said three defendants were jointly and severally liable for the trust funds which had come into their hands jointly or severally; so that there is now due to your complainants, as trustees, from said three defendants, the sum of \$25896. with compound interest thereon at 6% per annum, from 10 July 1893, besides certain other monies found due on an accounting between the parties litigant to Eq. No. 24084.

8 That Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey have large interests in what is known as the "Ten Syndicate", which owns lots 11, 12, and 13, in block 12 of Le Droit Park, in the County of Washington, District of Columbia, title to the same being held in the name of Thomas G. Hensey and Cyrus Bussey as trustees, for the aforesaid Ten Syndicate, and the members thereof.

That your complainants on information and belief aver that for the purpose of hindering, delaying, and defrauding your complainants as trustees, of the Le Droit Park Land Syndicate, and preventing collection of the trust funds so as aforesaid wrongfully withheld from the Le Droit Park Land Syndicate, the defendants Thomas G. Hensey and Cyrus Bussey are about to dispose of the lots in block 12 Le Droit Park held by them for said Ten Syndicate, and to distribute the proceeds of said sale among the persons interested in said syn-

dicate; and thereby hinder, delay and prevent, enforcement of your complainants' rights against the defendants, Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey.

That your complainants are informed and believe and therefore aver that moneys wrongfully derived and withheld from the aforesaid Le Droit Park Land Syndicate were used by the defendants Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, in payment for their interests in the said Ten Syndicate, about to be disposed of by said Thomas G. Hensey and Cyrus Bussey as Trustees;

That if said sale and disposition of the land held by Thomas G. Hensey and Cyrus Bussey as trustees for the aforesaid Ten Syndicate be made, a fraud will be perpetrated upon your complainants and they will be hindered, delayed, and defrauded in the collection of the trust fund so as aforesaid decreed to be due to them.

Wherefore the premises considered; your complainants pray:

1. That subpœna or summons shall issue out of this Honorable Court requiring the defendants and each of them to answer the exigencies of this bill of complaint.

2. That the defendants Thomas G. Hensey and Cyrus Bussey as trustees for the said Ten Syndicate be enjoined and restrained from disposing of any or all of the real estate herein mentioned held by them for and in behalf of what is known as the Ten Syndicate.

3. That Thomas G. Hensey, Mellen C. Hooker, and Cyrus Bussey and Melville D. Hensey, be restrained from paying over to or receiving any of the proceeds of the sale or disposition of the real estate aforesaid or of any of their interests in what is known as the Ten Syndicate.

4. For such other and further relief as to the Court may seem proper and the nature of the cause may demand.

DISTRICT OF COLUMBIA, *To wit:*

Before me personally appeared Charles H. Merillat, who on oath says that he has read the aforesgoing bill by him subscribed and knows the contents thereof, and that the facts therein stated as of his own knowledge are true, and that the facts therein stated on 10 information and belief he believes to be true.

CHARLES H. MERILLAT.

Subscribed and sworn to before me this 13th day of March 1906.

[SEAL.]

CLAUDE D. THOMAS,
Notary Public.

Substituted Auditor's Report.

Filed Jun- 12, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 24084.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

On the 3rd of May 1907 Cyrus Bussey filed a petition as surviving trustee for what is known as the Ten Syndicate comprised of parties having undivided interests in certain property in Le Droit Park, setting forth the existence of a fund being proceeds of sale of the said real estate for which in behalf of the syndicate members he prayed distribution under the order of the Court.

An order was passed by the Court on the same date referring the cause to the Auditor to state the distributive interest of each of the parties in the fund derived from the sale of the said property. The order further directed the Auditor to find and state what if any liability there is on the part of Cyrus Bussey and the other members of the said syndicate to the complainants in this cause or to the trustees appointed in this cause, arising out of the fact that subsequent to the filing of the original bill in this cause and the amendments thereto Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey were permitted to borrow money of the syndicate upon their interests therein, if it shall so appear, and also what if any liability the trustees of the said Ten Syndicate have incurred 12 for loaning the money of the syndicate at all to members of said syndicate upon their interest in said syndicate, if they so acted, subsequent to the filing of the original bill and the amendments thereto. After due notice I proceeded with the reference.

On the 24th of August 1891 the said Cyrus Bussey together with nine other parties entered into a written agreement in the following terms: "We the undersigned subscribe the amount opposite our names in a syndicate formed to purchase lots eleven, twelve and thirteen in block twelve, Le Droit Park, Wash. D. C. Price \$17,500.

Terms \$5,000 cash, \$2,750 in 6 mos. and \$9,750 in 1, 2 and 3 years. To be paid when notified by M. D. Hensey."

Thomas G. Hensey, Melville D. Hensey were parties to the original agreement; the said Mellen C. Hooker on the 20th of April 1892 acquired the interest of Alexander Scott one of the original parties. By deed bearing date the 3d of October 1891 there was conveyed to Cyrus Bussey and Thomas G. Hensey as joint tenants all of lots Nos. 11, 12, and 13 in block No. 12 in A. L. Barber and Co.'s subdivision of certain tracts of land known as Le Droit Park to hold the said land and premises in trust for the sole use and benefit of such persons as have contributed to its purchase, their heirs and assigns as tenants in common according to their respective contribution.

Also to do generally what the said trustees might deem necessary and proper to improve and develop the property and put it into marketable condition with power to borrow money, on such terms as they or the survivor of them should deem most for the benefit
13 of all concerned and to execute mortgages or deed of trust conveying and encumbering the whole or any part of the said land to secure such loans. Also in trust to lease or sell the said real estate or any part thereof in their discretion or that of the survivor in such manner and upon such terms as they or the survivor should deem most for the interest of all concerned.

The conveyance further provided for the rendering of due account by the trustees of their management of the trust and to make due and prompt distribution among the persons interested, their heirs and assigns as tenants in common according to their respective interests.

It will be observed that the cash payment for the property was \$5,000.00, \$2,750 to be paid in six months and \$9,750 in one, two and three years. When purchased the property was subject to a deed of trust securing one note for \$1,000 payable in one year and two notes each for the sum of \$1,500 payable respectively in one and two years, also a deed of trust securing one note for \$2,500 payable in one year and two notes each for \$2,000 payable in two and three years respectively. All these notes were dated the second of October 1891. There was a third trust given on the 5th of October 1891 to secure a promissory note for \$2,000 payable in six months.

The last mentioned note was paid on or prior to May 6, 1892, the deed of trust having been released on that date. The note for \$2,500 secured by the second deed of trust mentioned was paid on October 7, 1893.

The remaining two notes secured by the said deed of trust
14 aggregating \$4,000 and the notes aggregating \$4,000 secured by the trust first above described were carried without payment of principal until April 2, 1896 when they were paid from the proceeds of a new loan represented by two promissory notes each for \$4,000 payable in three years after date. The latter notes were paid April 19, 1900 from the proceeds of a condemnation proceeding in which a certain portion of the land in question was taken by the District authorities for public purposes and from which the Syndicate realized the sum of \$18,704 after payment of expenses and indebtedness and which was distributed to the members of the Syndicate.

A portion of the said proceeds was loaned on April 24th to certain of the members on the security of their interests, \$500 to Thomas G. Hensey, Melville D. Hensey, Mellen C. Hooker and W. H. Hills, each; and in October 1904 an additional amount was loaned to Thomas G. Hensey increasing the loan to him to \$900 and an additional amount was loaned to Melville D. Hensey increasing the amount of his indebtedness to \$822.

Sometime prior to the 13th of March 1906 the remaining portion of the said real estate was sold but before completion by payment of the purchase money and conveyance of the property, Charles H.

Merillat and Edward H. Thomas as trustees filed a suit in Equity Cause No. 26,121 setting forth that the said trustees on behalf of the members of the Le Droit Park Land Syndicate were entitled to possession of the interests of Thomas C. Hensey, Mellen C. Hooker and Melville D. Hensey in the Ten Syndicate owners of lots 15 11, 12 and 13 in block 12 of Le Droit Park, averring that if the proposed sale and disposition of the land held by Thomas G. Hensey and Cyrus Bussey as trustees for the Ten Syndicate be made, the said complainants, trustees of the Le Droit Park Syndicate, would be hindered, delayed and defrauded in the collection of funds decreed to be due to them in Cause No. 24,084. The bill prayed for a writ of injunction to prevent the said Hensey and Bussey trustees, from disposing of any of the real estate held by them for and in behalf of the Ten Syndicate and from paying over to or receiving any of the proceeds of sale of the said real estate.

This bill was answered by the defendants on the 5th of April 1906, and an agreement was made between counsel for the complainants in that cause and Thomas G. Hensey and Cyrus Bussey trustees in the following terms:

"It is this 5th day of April, A. D. 1906, stipulated and agreed between counsel for complainants in Equity Cause 26121 and Thomas G. Hensey and Cyrus Bussey trustees for shareholders in what is known as the Ten Syndicate,

First, the Complainants agree to the passage of the title by the Columbia Title Company, released from the operation of the Equity Cause aforesaid, and from any cloud of the title arising therefrom.

Second. The said trustees agree to deposit with the Columbia Title Company the proceeds of the land and the notes for the unpaid purchase money.

Third. The complainant agrees upon satisfactory proof of the interest in said proceeds of any shareholders or their heirs or 16 representatives not involved in Equity Cause 26121 or 24084; that such shareholders may receive the amounts properly due them or same shall be held until final determination of Equity Cause 26121 or 24084.

Fourth. That the interests of Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker in the Ten Syndicate whether the same be direct or indirect shall be retained by the Columbia Title Company until after final determination of Equity Cause 24084 and 26121."

Prior to the 14th of January 1893 the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey organized a syndicate for the purchase of certain land also located in Le Droit Park. As appears by the pleadings in Cause No. 24,084 the syndicate included a number of other parties, the whole number of shares being one hundred of the par value of \$1,500 each. On the said 14th of January the said real estate was conveyed to the said Melville D. Hensey who in turn conveyed the same by a deed in trust to the said Thomas G. Hensey and Mellen C. Hooker as trustees.

On the 16th of January 1893 the said Thomas G. Hensey and Hooker executed declarations of trust setting forth that they had

received from Melville D. Hensey conveyances of certain lots in the subdivisions of Le Droit Park which they held in trust for the shareholders of the said syndicate in proportion of the par value of their respective shares.

On the 18th day of July 1903 the complainants in this cause filed their original bill of complaint setting forth the organization of the said syndicate and conveyances of the property together with 17 the declarations of trust and averring that the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey had in the organization of the syndicate and purchase of the property committed certain frauds upon the other shareholders.

The bill prayed discovery by the said defendants, appointment of a receiver, writ of injunction against the defendants Thomas G. Hensey and Hooker from further management of the said property and assets and an accounting from the said three defendants together with other relief.

On the 20th of August 1903 the complainants filed an amendment to their original bill which is not material to the issues here and on the 27th of April 1904 they filed a second amendment to paragraph 12½ of the first amended bill, the said last amendment with its connections being as follows:

"That; on information and belief the complainants allege that by means of fraud referred to in the bill large sums of money illegally and wrongfully obtained by the said defendants from the complainants and those represented by them, were used in whole or in part by said defendants in the purchase of certain real estate and interests in real estate in the District of Columbia, the said estate being more particularly described as follows: "The interest held in the name of or for or on behalf of either, any or all, of the defendants, in Lots 11, 12, and 13 in Block 12 Le Droit Park, in the County of Washington, District of Columbia, the same being taken in the 18 name of Thomas G. Hensey and Cyrus Bussey, as trustees for a certain association known as the Ten Syndicate."

The prayer of the bill as so amended is that the said defendants Henseys and Hooker be enjoined and restrained from disposing of their interests in the real estate or other property described in the amendment and that trustees be appointed to sell the interest of the said defendants in the said real estate.

Although this amendment recited that Cyrus Bussey and Thomas G. Hensey held the legal title to the said lots 11, 12, and 13 in block 12, Bussey was not made a party to the amended bill, nor was any process issued thereon or any notice given to Bussey either directly or indirectly of the filing of the said amendment.

On the 28th of May 1906 the Court passed a decree in this cause adjudging the three defendants Henseys and Hooker to be indebted to the Le Droit Park Land Syndicate in the sum of \$53,819.17 with interest from January 10, 1906 to be paid to Charles H. Merillat and Edward H. Thomas as trustees for the said syndicate on or before the 20th of June 1906; and that the defendants Thomas G. Hensey and Melville D. Hensey were further indebted to the said syndicate in the sum of \$15,445.07 and the defendant Mellen C. Hooker so indebted in the additional sum of \$13,887.85 with interest.

The said decree in its tenth paragraph which more directly concerns this proceeding provides that unless the said money decree of \$53,819.17 be satisfied as directed, the said three defendants "are adjudged and decreed to have made all their payments made 19 subsequent to the 19th day of January 1893 on account of their interests in what is described in these proceedings as * * * the Ten Syndicate with the moneys of the Le Droit Park Land Syndicate and they be and thereby are declared and decreed to hold their interests in said syndicate acquired by or through payments made since January 19, 1893, as trustees for the Le Droit Park Land Syndicate and Charles H. Merillat and Edward H. Thomas as trustees for said Le Droit Park Land Syndicate are authorized and directed to take such steps as may be deemed necessary by them to reduce to possession such interests of said defendants in the syndicate and to hold the same for the use and benefit of the Le Droit Park Land Syndicate, said trustees Charles H. Merillat and Edward H. Thomas to succeed to all the rights and interests of said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey in the syndicate aforesaid as of date August 24, 1903."

On the 13th of March 1906 Charles H. Merillat and Edward H. Thomas filed in Equity Cause No. 26,121 a bill of complaint against the said Thomas G. Hensey, Melville D. Hensey, Mellen C. Hooker and Cyrus Bussey setting forth the proceedings in the present case 24,084 including orders and decrees of the Court herein substantially as above recited, and praying that the said Thomas G. Hensey and Cyrus Bussey as trustees be enjoined and restrained from disposing of any of the real estate held by them for and in behalf of the Ten Syndicate; that the four defendants be restrained from paying over 20 to or receiving any of the proceeds of the sale or disposition of the real estate of the said syndicate or of any of their interests therein. Answers to this bill were filed by Thomas G. Hensey and Melville D. Hensey on the first of May 1906 denying that they had at that time any interest in the Ten Syndicate, the syndicate having loaned them moneys on their stock several years before which absorbed their entire interest in the land or distribution; they also deny that any of the moneys belonging to the complainants were used in connection with the payment of this land by either of them.

The defendant Cyrus Bussey filed an answer denying any intention of disposing of the property for the purpose of hindering, delaying or defrauding the said complainants or any other person, and asserting that the defendants Thomas G. and Melville D. Hensey had no monetary interest in the said syndicate. The defendant Mellen C. Hooker filed an answer on April 3, 1906 setting forth that having owned at one time one share in the Ten Syndicate, he had several years before transferred, sold and assigned the said share for a valid consideration and denying that the money used by him in the purchase of the said share had anything to do with the Le Droit Park Land Syndicate.

On the 2nd of May 1906 the bill in the said cause was dismissed by the complainants.

It will be noted that the stipulation of April 5, 1906 provides

that the interest in the proceeds of sale of any share holders or their representatives not involved in that cause or the present one 24084 upon satisfactory proof of such interest may be paid to them 21 or held until final determination of the said Equity Cause No. 26,121 or No. 24,084; that further it provides that the interests of the two Henseys and Hooker in the Ten Syndicate shall be retained by the Columbia Title Company until after the final determination of both cases.

The amended bill so far as it relates to the interest of the parties in the Ten Syndicate is evidently based upon the theory of a resulting trust. It is averred by the complainants that moneys paid into the Ten Syndicate by the said three defendants after January 19, 1893 were moneys belonging to the said complainants or the Le Droit Park Land Syndicate. The decree of May 28, 1906 is also based upon the theory of a resulting trust declaring as it does that the payments made by the said three defendants subsequent to the said date on account of their interests in the Ten Syndicate were made with moneys in the Le Droit Park Land Syndicate and the said defendants are decreed to hold their interests in the said syndicate acquired by or through payment made since that date as trustees for the Le Droit Park Land Syndicate.

To the extent therefore of the interests in the Ten Syndicate possessed by Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker on the date of the said decree or of the bill in No. 26,121 which interests were purchased by payments made after January 19, 1893, such interests are held by the said defendants as trustees for the Le Droit Park Land Syndicate and the pertinent inquiry is what interests so acquired were so possessed by the said defendants at the time named; and first what moneys were

22 paid into the said syndicate by either of the said defendants after January 19, 1893. It is established in proof that from the formation of the Ten Syndicate assessments were periodically made for the payment of taxes and interest on the Syndicate indebtedness, and that the two Henseys and Hooker paid regularly or otherwise their shares of such assessments before and after January 19, 1893. The funds so provided were wholly applied in payment of the said fixed charges not increasing in any degree the value of the syndicate property. I do not mean to assert that such payments and their application were not of benefit to the syndicate inasmuch as they averted proceedings for the enforcement of trust claims and taxes liens, but I mean that the result of such application of the funds did not add to the value of the syndicate property or holdings. They had no greater market or intrinsic value by reason of such payments. To interpret the decree as giving the Le Droit Park trustees the benefit of such payments would be injustice to the parties against whom the present relief is sought, no one of whom had notice or knowledge of the claim of the Le Droit Park Land Syndicate or its trustees. In this connection it will be timely to note the fact that at the date of the decree neither of the two Henseys had any interest remaining in the Ten Syndicate, the loans on the security of their interests made in April 1900 and increased in October 1904 exceeding in the aggregate their shares in the proceeds of sale as

appears by the annexed statement of account. The controversy here, therefore, is practically between the trustees of the 23 Le Droit Park Land Syndicate and the other members of the Ten Syndicate exclusive of these three defendants.

Mellen C. Hooker borrowed from the Syndicate in April 1900 the sum of \$500 on the security of his interest which indebtedness at the date of the last sale of property exhausted his distributive share with the exception of the sum of \$137.01.

The Le Droit Park trustees have undertaken to prove that the said defendants contributed to the payment of the note of \$2500 which is described in the early part of this report on page three. This note was paid on the 7th of October 1893 but the proceedings here furnish no sufficient proof that either of the said three defendants contributed any portion of the sum, nor does it appear how or from what source the fund was derived for such payment. Among the evidence offered in this respect is part of the deposition of Thomas G. Hensey given in the main case in April 1904 and prior to the filing of the amended bill relating to the said Ten Syndicate. I append herewith so much of the said depositions as is relative to this transaction and it falls far short of any definite proof of payment by him of any part of this note.

"Q. Please state whether or not the \$500 was paid as agreed. A. I don't remember.

Q. And whether or not at the maturity the entire obligation was cancelled as to those lots, the maturity being October 1894? 24 A. I think it is, very likely, that it was paid off, and a new loan obtained, but I am not certain as to that.

Q. Please state whether or not you paid your share of that \$2500 which was agreed to be paid October 2nd 1893? A. I presume it is altogether likely that I did."

Melville D. Hensey, Mellen C. Hooker and another member of the syndicate were called by the Le Droit Park trustees to testify in this reference with relation to the payment of the said note, but neither of these witnesses had any recollection or personal information of the transaction, and were quite satisfied that no assessment was made for the purpose of raising funds to pay the note.

The proof on this point fails to establish payments by either of the Henseys or Hooker after January 19, 1893 excepting on assessments for payments of taxes and interest. I see no equitable reason for requiring the other members of the syndicate now to account to the Le Droit Park trustees for the said payments. They did not remain in the syndicate or add anything to its possessions or to the interests of any of its members and it is an important fact that they were received and paid out by the syndicate long before the filing of the amended bill.

The only other payments by either of the said defendants was the original payment of \$500 in August 1891 which is not reached by the decree.

If this view be correct it effectually disposes of the claim 25 of the Le Droit Park Land Syndicate or its trustees for while the decree in the latter portion of the tenth paragraph declares, the trustees of the said Le Droit Park Land Syndicate to suc-

ceed to all the rights and interests of the said defendants Henseys and Hooker in the said land companies or syndicate therein described as of date August 23, 1903, to interpret that portion of the decree in the full significance of its terms would be inconsistent with the preceding portion of the decree which limits the rights of the Le Droit Park Land Syndicate or trustees to the interests acquired by the said defendants by payments made after January 19, 1893. There is another fact worthy of note in relation to the date fixed in this decree August 24, 1903, which was eight months before the filing of the said amended bill relating to the Ten Syndicate and it would therefore be an attempt to make the decree retroactive to the extent of having no pleadings upon which that date could be fixed.

Again to interpret the latter portion of the decree literally would be to entitle the Le Droit Park Land Syndicate or its trustees to rights which they had not claimed in their amended bill, namely, the right to take the interests of these three defendants in the Ten Syndicate which were acquired by reason of their original cash payment made in April 1891.

As the order of reference directs me to consider or to inquire as to liability on the part of Cyrus Bussey and the other members of

the Ten Syndicate to the complainants by reason of permitting the said Henseys and Hooker to borrow money of the syndicate upon their interests therein subsequent to the filing of the original bill and the amendments thereto, if my findings as to the condition of the interests of the said three defendants in the Ten Syndicate be correct, it follows that at no time had the trustees of the Le Droit Park Syndicate any standing in the Ten Syndicate, or any right to complain of its management and conduct, but it may be useful to consider this direction of the order of reference.

Nothing in the deed of conveyance to Bussey and Hensey undertakes to limit the manner in which they shall deal with the property or assets of the syndicate. The real estate was conveyed to them in fee as joint tenants to hold the property in trust for the use of such persons as contributed to its purchase. They were given power to improve the property, to make sale, execute conveyances and to lease or sell and they were to make due account of their management and prompt distribution of funds.

Nor does the declaration of trust contain anything in the nature of prohibition. It states the right of the party to whom the declaration is made and given, states its liability of assessment and proceeding in case of default, and the method of assignment with a statement of the rights and liabilities of the assignee.

Certainly no harm was done to any of the members of the Syndicate or to the Le Droit Park Land Syndicate trustees, by the investment of funds of the syndicate upon interest bearing securities and no objection was made at any time to this method of dealing

27 by any of the members of the syndicate, some of whom on the contrary availed themselves of the practice and secured loans upon their interests. These claims by the Le Droit Park trustees are based largely upon what they are pleased to call the

doctrine of *lis pendens* claiming that the members of the syndicate were chargeable with notice of the filing of the second amended bill in April 1904, although not made parties thereto or served with process or notice of any kind, and to support their claim that *lis pendens* is notice to all the world, judicial expressions are taken from opinions in adjudicated cases as though the extent of the notice was unlimited by any condition. An examination of the cited cases fails to sustain the universal effect contended for by counsel.

In the case of Bellamy vs. Sabine, 1st De Grex and Jones 566, the Lord Chancellor refers to this method of expression in the following manner, page 580.

"The language of the Court in these cases is to the effect that *lis pendens* is implied notice to all the world. Not a perfectly correct mode of stating the doctrine. What ought to be said is that *pendente lite* neither party to the litigation can alienate the property in dispute so as to affect his opponent."

An essential requisite of *lis pendens* is that the holder of the legal title should be a party to the suit. In this case although the amended bill states the title of the Ten Syndicate property to be held by

28 Cyrus Bussey and Thomas G. Hensey, Cyrus Bussey was not made a party, nor was in fact, Hensey made a party as trustee, and no notice of any kind was given to Bussey or the other members of the Ten Syndicate until the filing of the bill in Equity No. 26,121. To this proposition it is required by counsel for the Le Droit Park trustees that the rule of *lis pendens* applies to personal property of a non-negotiable character and that the certificates or declarations issued to the members of the Ten Syndicate were personal property of that character; that when these defendants undertook to borrow money of the syndicate on the security of their interests, it was the duty of the trustees or other members of the syndicate or both to make or have made a proper examination as to the condition of the title of the party holding the certificate or declaration and that such an examination would have disclosed the existence of this litigation and the claim of the complainants. There are two answers to this contention, first that the interests of the members of the syndicate were not personal property. The parties to whom the declarations were issued were tenants in common of an undivided equitable title to real estate. The amendment filed by the complainants recognized this condition.

If these certificates or declarations were to be treated as personal property then at the date of the filing of the amendment of April 27, 1904 the Ten Syndicate or its trustees were the holders of the certificates or declarations which had been issued to the two Henseys and Hooker, holding them as security for moneys loaned or advanced upon them, being therefore vested with the legal title,

29 possession and equitable interest. If necessary, I would be constrained to hold that in this condition when the syndicate

advanced or loaned additional money in October 1904, they were not required to make examination of either the land or judicial records with reference to the rights of the party to whom the declaration or certificate was issued.

One more consideration may be in place, in argument here, it is

suggested by way of persuasion that Cyrus Bussey was negligent in the performance of his duties as trustee in the premises, by reason of which negligence the said Le Droit Park trustees and that syndicate have suffered or may suffer loss innocently and therefore Bussey should be held accountable. I am quite unable to agree with counsel in placing the negligence in this matter on Cyrus Bussey. It would have been an orderly and proper proceeding in preparing and filing the amended bill to make the trustees (both) holding the legal title to this property parties to that bill and to have had them served with process. For some unexplained reason, this was not done, and Bussey as well as the other members of the syndicate were left in ignorance of this proceeding and claim of the complainants. The complainants are the parties who should suffer if negligence is to be the test.

In the schedules herewith I have stated an account showing the condition of the syndicate members with the syndicate and with each other and stating the distributive portions of those entitled to distribution.

On the 19th of November 1907 as will appear by the record herewith on page 56 proof of the parties was closed on both sides 30 and the matters in dispute assigned for argument, and were so argued on Saturday, November 30, 1907. Thereupon I prepared a report which was submitted to counsel on both sides, my conclusions being based upon the absence of proof tending to show payments by the Henseys and Hooker into the Ten Syndicate after January 19, 1893. Thereupon counsel for the Le Droit Park trustees filed a motion to open the reference for the purpose of permitting them to submit further evidence relevant to that issue.

This motion was granted on the 27th of December 1907.

Subsequent to that date nearly one-half of the entire testimony and nearly all of the exhibits were submitted in evidence by counsel for the Le Droit Park trustees, and in connection with the matter of costs of the proceedings under the order of reference one half of the aggregate should fairly be charged to the said trustees whether they should be held liable for all the costs of the reference or not.

In the schedule herewith I have stated the distribution in accordance with the adjustment made between the members of the syndicate excepting that I have first appropriated the fund to the deposit made by the petitioner Bussey for costs in the Clerk's office and counsel fee to the solicitors for the petitioner which as the petition was filed in the interest of the syndicate members should be chargeable upon the entire fund, so far as the parties are here to respond. Thomas G. Hensey and Melville D. Hensey were indebted

31 to the syndicate in sums exceeding their distributive shares of the proceeds of sales; hence, are not included in this statement

of distribution. In two other cases the distributive shares are encumbered by indebtedness arising upon loans made to the specified members on the security of their interests. In these two cases I have taken the balance of the share deducing from it an equitable proportion of the counsel fee and deposit.

In the case of Mellen C. Hooker one of the said two, this adjustment leaves a balance of \$73.88 of his share which would be payable

to the Le Droit Park trustees were it not for the question of costs. If they are, as I hold them to be liable for costs of this reference, the balance of this distributive share could be appropriated in that direction and the balance would be proportionably taken from the remaining distributions. The statements of these costs will be found at the foot of the report.

The fund is next allotted to the members of the syndicate whose shares are not incumbered deducting from each its proportionate part of the counsel fee and deposit.

JAS. G. PAYNE, *Auditor.*

Auditor's fee	\$100.00
Cost of testimony	75.00
	<hr/>
	\$175.00

32 *Report of Distribution of Proceeds of Sale of Real Estate of the Ten Syndicate to the Bethany Baptist Church.*

Cash payment	\$824.32
Purchasers' notes paid.....	4,373.58
Interest collected on same.....	182.21
	<hr/>

To Deposit with intervening petition.....	\$5.00
Counsel fee to solicitors for the petitioner	
Bussey	500.00
	<hr/>

	\$505.00
	<hr/>

	\$4,875.11
--	------------

To Estate of Wallace H. Hill:

Balance of share.....	192.01
Counsel fee as above.....	63.13
	<hr/>

\$128.88

Mellen C. Hooker:

Balance of share.....	137.01
Counsel fee etc.....	63.13
	<hr/>

73.88

Cyrus Bussey:

One full share less counsel fees.....	778.72
---------------------------------------	--------

33	\$4,875.11
----	------------

E. Z. Pullman:

One full share, Less counsel fees, etc.....	\$778.72
---	----------

Estate of Ruth G. Blasland:

The same	778.72
----------------	--------

William E. Leonard:

The same	778.72
----------------	--------

Estate of C. D. Roosa:

The same	778.72
----------------	--------

Benjamin Le Fevre:

The same 778.72

Fractions03

\$4,875.11

Subject to costs of reference see report.

JAS. G. PAYNE, *Auditor.*

JUNE 12, 1909.

It is hereby agreed and stipulated that the foregoing is a true copy of the original Auditor's report filed June 4, 1908, and that the same may be substituted for the said original which has been mislaid.

MASON N. RICHARDSON,
Attorney for Complainants.
LYON & LYON,
Attorney for Intervenors.

W. J. NEWTON,
For Blasland.

34

Testimony Before Auditor.

Filed June 4, 1908.

RICHARDSON
vs.
HENSEY.

TUESDAY, May 14, 1907—10:30 a. m.

Hearing pursuant to notice.

Present: Messrs. Merillat and Richardson for themselves as trustees, Messrs. Symon Lyon and J. J. Darlington for General Bussey and share holders of the Syndicate, Mr. William Henry White appears for Mr. E. H. Thomas counsel for Daniel D. Weedon Administrator C. T. A. of Thomas G. Hensey, and Ruth B. Hensey.

Mr. DARLINGTON: We had expected to have present at this session the administrator of Mr. Hensey, who we expected to produce all the papers relating to the ten syndicate which he found among Mr. Hensey's effects. He is not here, but Mr. White is here representing him and the papers are here. We will put them in subject to such further proof as the administrator may desire or as may arise.

Mr. DARLINGTON: We offer in evidence the original subscription of what is known as ten syndicate dated August 24, 1891 and ask that it be copied into the record.

It is as follows:

"10 shares \$500. cash, \$275. bal. 975. 1, 2, 3 yrs.

WASH'N, D. C., Aug. 24, 1891.

We the undersigned subscribe the Amount opposite our names in
 a syndicate formed to purchase lots eleven, twelve, and thirteen
 35 in block twelve, Le Droit Park, Wash. D. C. Price
 \$17,500. Terms \$5000 cash, \$2750 in 6 mos. and \$9750 in
 1, 2, and 3 years.

To be paid when notified by M. D. Hensey.

Name.	Address.	Cash.	6 mos.	1, 2, 3 yrs.
Pd. 500.				
M. D. Hensey.....	1300 F Street, N. W.	1 sh.	\$500	275 975
Pd. 500.				
Thos. G. Hensey	1300 F Street, N. W.	1 sh.	500	275 975
Pd. 500.				
B. M. LeFerve.....	Hoffman House, N. Y.	1 share		
	City.			
Pd. 500.				
W. H. Hills.....	1315 Riggs St.		500	
Pd. 500.				
Cyrus Bussey.....	1204 N Street, N. W.		500	
W. Blasland.....	915 O Street, N. W.		500	
Pd. 500.				
C. D. Roosa.....	201 Maple Ave.		500	Pd.
Pd. 500.				
William W. E. Leon- ard.....	805 T Street, N. W.		500	Pd. Sept. 15/91
Trans.				
[Alexander Scott.....	1013 S Street, N. W.		500]	*
Pd. 500.				
E. J. Pullman.....	935 Pa. Ave.		500	
M. C. Hooker.....	Transferred from Scott.			

Mr. DARLINGTON: We next offer in evidence the deed in trust by Melville D. Hensey to Cyrus Bussey and Thomas G. Hensey dated October 3, 1891 recorded in liber 1614 folio 409, to be marked exhibit No. 1.

I also offer certificate No. 4 issued to Wallace H. Hills and by him assigned in blank and annexed to it is his promissory note of April 24, 1900 for \$500 made payable to Cyrus Bussey and 36 Thomas G. Hensey, trustees and ask that they be marked Exhibit No. 2.

Mr. MERILLAT: We desire to reserve exceptions to the admission of this certificate until after a fuller examination of the deed in trust which does not seem to contemplate the issuance of any such certificates. Our position being that the deed in trust conveying the property does not authorize the issuance of these certificates and we desire to reserve our objections upon that score.

We desire to reserve the same objection with reference to the loan that there was no power in the trustees to lend upon the syndicate certificates. We do not object to the certificate as it conveyed to Mr. Bussey, one of the trustees knowledge of the practice of lending money upon syndicate certificates.

The AUDITOR: The ruling is reserved.

Mr. DARLINGTON: In offering these papers it must be understood that we are not admitting or denying that General Bussey had anything to do with these loans or knew of their existence we expect to show that he did not. We are simply introducing the papers because we found them among the papers of Mr. Hensey.

Mr. NEWTON: I have no objection to the admission of these papers providing they are taken for whatever appears to be on the face of them.

Mr. DARLINGTON: We also offer in evidence subject to the same qualifications certificate No. 9 issued to Mellen C. Hooker endorsed by him in blank, together with his promissory note of April 27, 1900 payable three months after date to the order of Bussey and Hensey trustees, and ask that they be marked Ex. No. 3.

37 MELLEN C. HOOKER having been sworn testified as follows:

By Mr. DARLINGTON:

Q. Were you one of the members of this so called ten syndicate?
A. I was.

Q. Please look at the papers which I hand you purporting to be certificate No. 9 headed Le Droit Park Syndicate and state whether you received that certificate as a member of that syndicate? A. I did.

Q. This is headed Le Droit Park Syndicate, was it known under that name? A. It was not known by the Le Droit Park Syndicate but by the name ten syndicate.

Q. Look at the lots described in the syndicate and state if they are the same lots that the ten syndicate owned? A. To the best of my knowledge they are.

It is agreed between counsel that the ten syndicate certificates have the printed heading Le Droit Park Syndicate.

Q. In whose hand writing is the blank endorsement on the back of the certificate? A. My hand writing.

Q. I beg to hand you what purports to be your collateral note of April 27, 1900 payable three months after date to Bussey and Hensey trustees, describing one share of the Le Droit Park Syndicate stock, in parts of lots 11, 12, 13 in block 12 and ask you in whose hand writing the signature M. C. Hooker at the bottom of the note is?

A. That is my signature.

38 Q. Did you borrow that \$500? A. I did.

Q. From whom? A. From Thomas G. Hensey, I cannot state who handed me the money but I got it in Mr. Hensey's office.

Q. When did you get that money? A. Sometime in 1900.

Q. At or about the time of the note? A. Absolutely at that time.

Mr. DARLINGTON: We renew our offer of both the note and the certificate.

Mr. RICHARDSON: We reserve our objection the same as to the former offer.

The AUDITER: The ruling is reserved.

Mr. NEWTON: Representing Mrs. Ruth G. Blasland I have no objection to their being accepted for what they contain on their face.

By Mr. RICHARDSON:

Q. How was this money paid by check or cash? A. From the nature of the case I presume it was paid by check, but I have no recollection.

Q. Do you recall whose check it was? A. I do not.

Q. Do you know General Bussey. A. I have seen him, but I am not acquainted with him.

Q. You knew him to be one of the trustees of the Syndicate? A. Only by name not by my knowledge of the gentleman, as I see him to day.

39 Q. You never met him? A. No.

Q. Never had any conversation with him in reference to the loans? A. No.

Q. Have you any knowledge as to whether he was informed in respect of these loans? A. I have not.

Q. At the time of the loan what was done with the certificate? A. I surrendered the certificate to the party who paid me the money, probably being Mr. Hensey.

Mr. WHITE: I object under section 1064 of the Code and ask that the answer be stricken out.

The AUDITOR: The objection is overruled.

Mr. WHITE: I note an exception.

By Mr. WHITE:

Q. Were your transactions entirely with Mr. Thomas G. Hensey? A. They were with him or someone representing him at his office.

Mr. WHITE: I ask to have all his testimony stricken out under Section 1064 of the Code.

By Mr. MERILLAT:

Q. Did you receive any reports of the ten syndicate from the trustees from April 27, 1900. A. It is impossible for me to tell, I have nothing by which to refresh my memory.

40 Q. Don't you know whether from the year 1900 to the present time you have received any reports whatever from the trustees of the ten syndicate? A. I did receive a notice purporting to be a settlement showing the amount due each one but I cannot tell when I received it.

Q. Was it not the practice and as a matter of fact, did you not receive trustees' reports showing the affairs of the syndicate once or twice a year or once every two years from 1900 on? A. I don't

know that there was any such practice, I have no knowledge of having received any such things.

Q. Where you received money from the ten syndicate did you receive it by a trustees' check? A. I could not state whether by check or cash.

Q. I did not speak with reference to special note but with reference to any instance, where you received money were they not always received by trustees' check? A. I don't know what you mean by receiving money from the ten syndicate I have no knowledge of any such transactions.

Q. Where were you banking at the time you received \$500 from the ten syndicate on this loan? A. That is impossible for me to state.

Q. You don't know what banks you were doing business with, in what banks you made deposits? A. At different times I dealt with the Metropolitan, the Citizens and the American, but I do not know what bank I was doing business with at this particular time.

Q. At any rate it was one of those banks you had a deposit account in? A. So far as I remember.

Q. Were you an original member of the ten syndicate? A. No, I was not.

Mr. DARLINGTON: From the same source and under the same qualifications we produce and offer certificate No. 2 issued to Thomas G. Hensey, and what purports to be his promissory note of October 27, 1904, for \$900 payable 6 months after date to the order of Bussey and Hensey and ask that they be marked Ex. No. 4.

Mr. MERILLAT: We of course reserve our general exceptions as to the authority of the trustees to have made this or any other notes, not desiring to repeat the objection, and we further desire to call upon counsel for General Bussey one of the trustees to produce the checks that were given to Melville D. Hensey, and Thomas G. Hensey, Mellen C. Hooker and Wallace Hills in payment of the loans made to them. We make the same call upon the administrator of Thomas G. Hensey and his counsel.

Mr. DARLINGTON: On behalf of General Bussey we state there never were any such checks to which he was a party or that we have in our possession or within his knowledge.

Mr. WHITE: Mr. Weedon the administrator of Mr. Hensey at my request made a very thorough search and informs me that he has been unable to find any checks and I know of no additional place for him to search where he would be likely to find anything and my information is that Mrs. Hensey had made a thorough search and has been unable to find anything.

Mr. MERILLAT: I further desire to call upon counsel for the administrator for the deceased trustees and upon counsel for 42 General Bussey to produce all such reports as were made to the ten syndicate from and including the 1900 to date.

Mr. DARLINGTON: We will produce every thing that we can.

Mr. MERILLAT: We further desire to make this same call with reference to the reports upon the other parties here represented in person or by counsel.

Mr. DARLINGTON: The attorney for the administrator has produced what purports to be a ledger of Thomas G. Hensey and on pages 398 and 400 of which we find entries purporting to relate to what is known as the ten syndicate property and we offer those entries subject to the same qualifications.

Mr. MERILLAT: We will have to call for some strict proof with reference to this book because Mr. Hensey is under oath in his life time as saying that he had no such book in his possession, and we shall therefore desire strict proof as to the entries in the book.

Mr. DARLINGTON: We will reserve the book then until we can get the administrator.

CYRUS BUSSEY, having been sworn, testified as follows:

By Mr. DARLINGTON:

Q. General you were one of the ten syndicate? A. Yes.

Q. You are one of the two trustees mentioned in this deed? A. I was asked to be a trustee to hold the property.

Q. Please state what part you took in the operations of the 43 syndicate? A. Absolutely no part whatever.

Q. Why was that? A. On the 11th of January 1895 I was run over by a runaway horse on 14th street opposite the Ebbitt house, and I was taken to Emergency Hospital and in two weeks was removed to my home, where I was confined to my bed for nearly the whole year, my neck was nearly broken and ever since that time my pulse has been from 100 to 150 and I have suffered from very severe heart disease, I could not rise up, lie down or change my position without suffering great agony and it has entirely incapacitated me for the performance of any business whatever.

Q. As a matter of fact have you taken any part in any business dealings whatever? A. No, I had an office in the Kellogg Building but I turned my business over to Mr. Lyon and from that time he has received my business letters and answered them in my name, I have not attempted to do any business.

Q. What part if any did you have in the making of loans of any moneys belonging to the ten syndicate to Mr. Hooker or either of the Henseys? A. None whatever.

Q. When did you first learn that any such loans had been made? A. The 7th of March when that statement was brought to me by Mr. Hensey.

Q. What year was that? A. 1906.

Q. You can state under what circumstances you first 44 learned of the loan? A. Mr. Hensey reported that the property had been sold to the Baptist Church and they were ready to pay the money \$1250 in cash and the balance in notes at 18 months bearing 5 per cent interest, to those of the syndicate who had not already received their money.

Mr. MERILLAT: We object to any statement of a transaction with the deceased, under Section 1064 of the Code.

Q. This report was made to the syndicate by Mr. Hensey? A. Yes.

Q. At this time March 7, 1906, what knowledge if any did you have of either of the two suits brought against Mr. Hensey?

Mr. MERILLAT: I object on the legal ground that suits having been filed in equity court relating to lands, thereby notice was imputed to General Bussey and other parties of the ten syndicate with reference to the claims against this land.

The AUDITOR: The ruling is reserved.

A. I had no knowledge of either one of the suits on the 7th of March, at which time we met to divide the proceeds of the money received from the Baptist Church, which was the final settlement of the affairs of the syndicate.

Q. In that division, please state whether either Thomas G. Hensey or Melville D. Hensey, or Mellen C. Hooker received any portion of the proceeds of sale.

Mr. MERILLAT: I object.

The AUDITOR: The ruling is reserved.

A. The statement shows that they had received, Melville D. Hensey and Thomas G. Hensey had received their full interest in the syndicate. Thomas G. Hensey had borrowed \$900 and paid 45 back to the syndicate enough to make his allowance of what was due him from the syndicate on the final settlement. Supposing that we were to receive our money within a week and the approval of this report being absolutely necessary to effect the sale to the Baptist Church, I signed the papers recognizing Mr. Hensey and Mr. Hooker as having received this money from the syndicate.

Mr. MERILLAT: I object to this statement as immaterial in view of the papers.

The AUDITOR: So far as the witness states the contents of written papers the objection is sustained.

Q. Please look at the papers I hand you and state if they are the papers you have referred to as having been signed? A. These are the papers I had in my possession and signed at this time I had just gotten up from a terrible illness in which I had expected to die, I had even gone so far as to choose my pall-bearers, and naturally I had to give a very superficial notice to this business. I was not able to go down and sign them, they were sent to me at the house with a notary as most of my business with Mr. Hensey was done, either he or someone else would call at the house and get my signature.

Q. Can you explain the pencil operations on these two papers? A. When the statement of March 7th was made up Mr. Hensey had \$1200 in hand which David Moore had reported as the amount of cash received from the Baptist Church, the statement was made up showing that the six parties who had not borrowed money from

46 the syndicate were entitled to \$104.66 cash. It was later reported by Mr. Moore that \$50 more had been paid as cash on the payment of the Baptist Church making \$1250, then a corrected statement was made up by which the taxes for 1906 a curb tax for \$159.06, these two sums amounting to \$180, was in-

cluded and the amount of cash that each member got was reduced from \$104.66 to \$83.09, then there was 57 cents received from Moore and a tax of \$179.99 which was within two cents of the statement.

Q. Were those made before or after March 7th? A. After that settlement had been approved.

Q. How long after? A. In April sometime.

Mr. DARLINGTON: I offer these papers in evidence, No. 5.

Mr. MERILLAT: I will ask to reserve my objection.

Q. Have you now or ever had any other reports of the syndicate transactions? A. No report from 1909 until this report was made.

Q. How about prior to 1900? A. There was a report made when the money was received from the street being opened on Rhode Island Avenue.

Q. Is this a copy of that report? A. Yes.

Mr. DARLINGTON: I offer that in evidence marked No. 6.

Q. Have you ever personally signed any checks or in any other manner disbursed any money belonging to the ten syndicate? A. No, I never signed a check for any purpose, Mr. Hensey even paid the taxes with his personal checks and for street purposes.

47 Q. What moneys belonging to the ten syndicate was in your possession? A. Not one dollar.

By Mr. MERILLAT:

Q. You say that since 1895 you have conducted or transacted no business of any kind? A. I have not transacted any business of any kind, I would go to my office and sometimes stayed ten or fifteen minutes, my strength would not allow me to stay any longer, I would go down merely to get my personal private mail, the rest of my business I turned over to Mr. Lyon.

Q. My question was did you transact any business at all? A. It was transacted in my name but I took no part in it, I do not recall but one case that I have managed myself in twelve years.

Q. As a matter of fact since 1895 have you not been a frequent visitor in the Glover Building in the office that was McCartney's and later W. B. Hibbs', did you not visit those offices? A. No, I have not been in active speculation for ten years, I have not made any investments except for cash by buying property outright.

Q. Didn't you have an account with John M. McCartney and later with W. B. Hibbs? A. I never had an account with McCartney in my life I had an account many years ago with W. B. Hibbs.

48 Q. How long ago? A. I could not tell when it terminated, but another party was interested with me and most of the business I transacted from my house through him, sometimes when I would come down town to my office I would go across to get some news when I was able, there were times when I was not able to even come down town, particularly in 1900. There was not a minute from January to September in 1900 that I did not suffer the most agonizing pain every day, which unfitted me for any business, I was confined to my house all the time.

Q. Is it not a fact that in 1895 you had an account with W. B. Hibbs the date when you said you transacted your last business?
A. When I was hurt I had an account with him, and that account was kept open for quite a while. I don't know how many years it has been since it was closed up.

Q. Has that account been a live account since 1895? A. It was alive in 1895 it took quite a while to close it up perhaps two or three years, it did not take any work on my part to do that, I spent very little if any time there, I was always home at 11:30 every day and I never came down town in the afternoon.

Q. Is it not a fact that you were frequently in W. B. Hibbs' office as much as two or three hours a day. A. I don't think so.

Q. Is it not a fact that you frequently were there as much as an hour a day attending to the business connected with the fluctuations of stocks? A. I never conducted any business connected with the fluctuations of stocks with Mr. Hibbs in my life.
49

Q. In whose name was that account with Hibbs? A. My name.

Q. You bought stock? A. I never bought or sold a share of stock on speculation with Mr. Hibbs.

Q. Did you with any other broker? A. No. I never speculated in stocks.

Q. You have made investments in stocks with any other broker? A. I have bought stock for cash and paid for it.

Q. With whom were those accounts kept? A. I never kept a regular account I would go in and ascertain the price of stock, they would report to me and I paid for it.

Q. What broker's offices did you go in? A. I bought some from Miller & Co., and from Henry Clews, small transactions.

Q. What others. A. Absolutely no others.

Q. You stated that another man was associated with you in these transactions, who was he? A. I decline to answer.

Mr. MERILLAT: I ask that the witness be instructed to answer the question.

The Auditor, holding that the witness should not be compelled to answer the question declines to require him to do so.

Mr. MERILLAT: I except to the Auditor's ruling.

50 Q. Please state whether that person was Thomas G. Hensey? A. I never had any transactions with Mr. Hensey in my life, of that kind.

Q. Did the ten syndicate have any meetings at any time from 1899 on? A. No, I never attended a meeting of the ten syndicate I don't remember whether they had any.

Q. Do you know Wallace Hills? A. I do.

Q. Was there any meetings of the ten syndicate at the time of condemnation proceedings concerning Rhode Island Avenue. A. I don't think so, but I won't be positive.

Q. After the money was received from the Government on the damages was there any meetings of the members of the syndicate? A. Not that I remember.

Q. Did you know of the receipt of this money? A. I did.

Q. From whom did you learn that fact? A. From the receipt of the money.

Q. In what way did you learn, please explain your answer? A. A check was made for the amount of the money.

Q. What kind of a check? A. A check on the sub-treasury.

51 Q. To whose order was it made payable. A. The trustees.

Q. What was done with that check? A. I endorsed my name on it and gave it to Mr. Hensey to disburse the fund to the stockholders.

Q. For what reason did you give him the check? A. Because I was not able to attend to the business.

Q. For what purpose did you give it to him? A. To disburse the fund to the stockholders.

Q. What if any direction did you give him as to how the money should be disbursed? A. None whatever.

Q. Was it deposited to the trust account? A. Deposited to his own account, I presume as he gave his own check for the payment of taxes etc. and for the share of each individual.

Q. Were you aware that he had deposited it to his personal account? A. I was not.

Q. When did you first become aware of that? A. When I received his check for my share.

Q. When was it that you received his check for your share of the disbursement? A. When that statement shows it. (referring to the statement dated April 19, 1900, exhibit No. 6)

Q. My question was, when you received your share of the check the United States Treasury gave you for the Rhode Island Avenue extension, was that in 1900? A. Yes.

52 Q. So, as I understand it, then in April 1900 you knew that trust fund had been deposited in bank to Thomas G. Hensey's personal credit, is that correct? A. I didn't have any knowledge of what he did with the money, he took it to disburse among the stockholders.

Q. You knew that that check had been deposited in that way? A. It was a natural inference.

Q. So you knew that he had deposited the money to his own personal credit?

Mr. DARLINGTON: I object

The AUDITOR: The objection is sustained.

Q. How long after this sub-treasury check was endorsed by you was it before you received your share of the proceeds? A. I don't think it was more than a week.

Q. You received the personal check of Thomas G. Hensey? A. Yes.

Q. Not a trustee check? A. No.

Mr. WHITE: I object to the testimony of conversations or transactions with Thomas G. Hensey under section 1064 of the Code and in order to prevent a repetition of this objection I ask that it be considered as being made throughout the testimony.

The AUDITOR: The ruling is reserved.

Q. How much was the check you received? A. The statement shows it.

Q. Was it \$1870.40? A. \$452.72.

Q. Did you make any inquiry of Thomas G. Hensey as to how it happened that you received his personal check in payment 53 of your share instead of a trustee's check. A. I won't be positive it was his personal check, or whether he sent it as trustee.

Q. Did you make any inquiry as to how it was it was not a joint check, that is signed by yourself and Thomas G. Hensey jointly as trustees.

Mr. LYON: I object.

Q. Did you authorize Mr. Hensey to deposit this check to his personal credit? A. I don't think I made any request whatever regarding the matter, I was in no condition to attend to any business, I did not ask him anything regarding it, I regarded Mr. Hensey as an honest man and perfectly able to faithfully dispose of these funds and I turned the check over to him.

Q. Where did this \$2722 come from? A. Part of that fund came from the city. You will find me charged there with \$272, ten times that is \$2722 and that is the money Mr. Hensey held up.

Q. You are now referring to this item of assessment of benefits \$272.25 as one-tenth of the amount held up? A. Yes.

Q. What is this item old account interest due Thomas G. Hensey \$100.06 refer to? A. Disbursements for paving three streets.

Q. What is the item interest referred to? A. Interest on the money he paid out, he advanced it at the time, there was no money in the Treasury to pay these obligations of the syndicate.

Q. Were you aware that he personally had advanced any 54 money of your own knowledge? A. Not at the time.

Q. When did you first learn it. A. When that statement was made.

Q. The statement of April 1900? A. Yes, a curb tax and various other taxes that was paid by him and street tax.

Q. Did you see or ask to see the account or book in which he had entered up this money he claimed he had paid out, on which he claimed interest.

Mr. DARLINGTON: I object.

The AUDITOR: The objection is sustained.

Mr. MERILLAT: I note an exception on the ground that this item being an item which Thomas G. Hensey was to pay to himself in reimbursement of moneys he claimed to have paid called upon General Bussey to investigate and see that Thomas G. Hensey had actually made those payments for which he was claiming.

The AUDITOR: In sustaining the objection to this examination I do so upon the ground that at the time the trustees representing the Henseys and Mr. Hooker became vested with the rights of those parties in this syndicate it must be assumed that they took those rights subject to the equitable obligations of the said parties. The transaction in question had been acted upon by the ten syndicate

in the form in which it is stated in the question as properly charged by Hensey for moneys advanced by him to pay municipal charges upon the property and unless it is alleged that the transaction was fraudulent in such manner as to be chargeable upon Hensey
55 and his co-trustee in this syndicate it is proper to sustain the objection to any further examination along this line.

Q. Do you know of your own personal knowledge what this item "old account" consists of.

Mr. DARLINGTON: I object.

The AUDITOR: The objection is sustained.

Mr. MERILLAT: I note an objection.

Q. What is this item, legislative expenses, attorney's and witnesses' fees \$224.45?

Mr. DARLINGTON: I object.

The AUDITOR: The objection is sustained.

Mr. MERILLAT: I note an exception.

Q. General Bussey, at an interview with me didn't you first state that you had this money on hand and that Mr. Hensey came to you and wanted to borrow the money of the syndicate and state that the money might as well be getting interest and that you considered it was a good thing, and that you had no knowledge at that time of any suits against Mr. Hensey and didn't I thereupon respond to you that on your own showing you were responsible because you had no authority to lend the syndicate money on the security of the shares and didn't you thereupon reject that statement, saying that you knew nothing about it, after I had replied that you were responsible, and that interview took place in the office of Mr. Lyon in the Kellogg building? A. I never told you that Mr. Hensey proposed lending the money on the stock, Mr. Hensey told me that he and Mr. Hooker were engaged in some real estate transactions and they required a good deal of money, and they proposed
56 to borrow the money on the real estate, I distinctly told you that I didn't know that Hensey was lending money on stock, that question never came up. I supposed he was lending it on real estate.

Q. When was this? A. When Mr. Hensey proposed this?

Q. Yes. A. I think 1900.

Q. Did you say to him then that he might lend the money in this way? A. Not in that way, no.

Q. That he might lend it on real estate? A. I had no objection.

Q. Was not your statement to me that Mr. Hensey had come to you a little while before this loan to him in 1904 and say the syndicate had some money on hand and that he Thomas G. Hensey would borrow the money of the syndicate on his share which would be security for it and that you thought as that money was idle, you might as well get it at interest? A. I have no recollection of any such transaction.

Q. Did you subsequently learn after this first conversation when Mr. Hensey stated to you that he was going to lend the money on

real estate when you say you assented, did you subsequently learn that he had done so? A. No.

Q. Did you make any inquiries? A. I did not.

Q. Did you examine the books to see whether that had 57 been done? A. I did not, all of which I have already stated,

I had no knowledge to examine any books, I was not able to transact any business whatever.

Q. Did you make any inquiries thereafter to see if interest was coming in upon any money that Hensey might have loaned after he stated to you he proposed doing so? A. I have no recollection of making any inquiries about it.

Q. You didn't likewise inquire what if any security he got if he did lend the money? A. I didn't know that he had lent a cent until March 7, 1906.

Q. In what bank did Mr. Hensey keep this syndicate fund, on what bank was this check drawn that you received from Thomas G. Hensey. A. I have no recollection.

Adjourned.

RICHARDSON
vs.
HENSEY.

TUESDAY, June 18, 1907—1:30 p. m.

Hearing pursuant to notice.

Present Messrs. Richardson, Merrillat, Darlington, Lyon and White.

Mr. EDWIN WILLIAMSON, having been sworn, testified as follows:

By Mr. LYON:

Q. Have you in your custody a stock certificate of William 58 E. Leonard? A. Yes.

Witness produces certificate.

Mr. LYON: I offer in evidence certificate No. 8 representing the interest of William E. Leonard.

Q. Where does Mr. Leonard live? A. Bellview, Nebraska.

Mr. LYON: We also offer in evidence the memorandum on the reverse side dated April 25, 1900, with the endorsements thereon.

Mr. MERILLAT: We desire to object to so much of the statements as are contained in the endorsement signed Thomas G. Hensey on the back of the certificate on the ground that the same is no evidence of the facts stated therein.

Mr. DARLINGTON: We submit that this paper came from the holder of this certificate and that this endorsement on it is at least evidence of the holder's acquiescence in it.

The AUDITOR: The ruling is reserved.

—. We find endorsed on the certificate, "assigned to Thomas G. Hensey on account of final settlement, March 19, 1906, W. E. Leon-

ard." Mr. Williamson are you acquainted with the hand writing of Mr. Leonard? A. I am.

Q. Is that his signature? A. To this assignment yes.

Q. Have you had any correspondence with Mr. Leonard? A. I have.

Q. Can you explain that endorsement? A. I think the correspondence between Mr. Leonard and Mr. Hensey put into my hands, with my own correspondence with him will explain it fully.

59 Q. Have you in your possession a letter which directed me to go to Mr. Hensey and obtain that certificate? A. Yes.

It is agreed by and between counsel that Mr. Leonard retains a one-tenth interest in the syndicate unaffected by assignments to Thomas G. Hensey endorsed upon the latter, they having been made simply to facilitate settlement.

Q. Have you in your possession two statements given William E. Leonard as of date April 19, 1900? A. Yes.

Mr. LYON: I offer those statements in evidence.

Mr. MERILLAT: We ask that the statement of April 19, 1900, with the collateral note signed by William E. Leonard may be inserted in the record.

It is agreed by and between counsel that the signature William E. Leonard to the collateral trust and note of date September 5, 1895, is the genuine signature of William E. Leonard.

DANIEL B. WEEDON, having been sworn, testified as follows:

By Mr. LYON:

Q. State whether you made an examination of the effects of the late Thomas G. Hensey for the purpose of discovering what if any papers were there in relation to what is known as the ten syndicate? A. Yes.

Q. Did you find any papers? A. A few.

Q. What did you do with them? A. I turned them over to Mr. E. H. Thomas and Mr. White.

60 Q. Turn to this batch of papers and identify them? A. I don't — that I could, I have a receipt for all the papers I gave them.

Mr. WHITE: Those are the papers.

Q. You turned them over to Mr. White and Mr. Thomas? A. Yes, they were in the office together.

It is agreed by and between counsel that the papers produced by Mr. White are the papers to which Mr. Weedon had referred.

BENJAMIN LEEFREVRE, having been sworn, testified as follows:

By Mr. LYON:

Q. Are you a member of the ten syndicate? A. Yes.

—. Have you any paper showing your interest in the said syndicate? A. Yes.

Witness produces certificate No. 3.

Mr. LYON: We offer in evidence certificate No. 3 representing the interest of General Le Fevre.

It is agreed by and between counsel that the production of further certificates of the parties in interest is waived.

It is further agreed that the certificates issued to Clinton E. Roosa has passed under his will to his widow Martha A. Roosa who is the present holder thereof.

By Mr. MERILLAT:

Q. Mr. Le Fevre in the settlement of April 19, 1900, I find that there are items, legislative expenses, attorney's fees and witness' fees, \$224.45 does that represent in any particular moneys paid 61 to you? A. Yes.

Q. What does the matter of legislative expenses mean? A. I might possibly answer that by commencing at the first of the arrangements.

Mr. DARLINGTON: We object to this for all the parties we represent excepting Mr. Le Fevre himself who desires to waive that objection.

A. I have written documents here that cover my part, the term means expenses connected with the procuring legislation passing the bill before Congress, and the expenses connected with that.

Q. Was General Bussey connected with what work was done under that? A. Not to a great extent, his health was very bad and he took very little part, I think he attended one or two of the first meetings we had when we discussed this matter. I have my reports of the work I did and the work I had done which will explain the whole matter.

Q. Where did those meetings take place? A. Mr. Hensey's office, one or two were there right after the syndicate formed. I think Mr. Bussey was present at one or two of them.

Q. During any of these meetings were the books or accounts of the ten syndicate at any time exhibited? A. No, I don't think they were.

Q. Was there any call made by General Bussey or anyone else to see the books and accounts?

Mr. DARLINGTON: It will be understood that we object to going into this item of legislative expenses except so far as General Le Fevre is concerned.

62 The AUDITOR: The objection is sustained.

Mr. MERILLAT: I desire to note an exception on the ground that we expect to prove that General Bussey was connected with these legislative expenses and that he did know that this item was being paid out by his co-trustee and that it was an improper expense.

By Mr. DARLINGTON:

Q. You stated that you received this money? A. Yes.

Q. Please explain what you mean? A. I received a certain amount of money.

Q. What did you do with it? A. I settled the accounts and obligations that I had made and there was a small amount left, here is a memorandum of the expenses that I incurred, beginning with the first five or six years of the syndicate.

Q. What did you do with the money that you received? A. My first contract was with Mr. Washington. I want to say first that when it was discussed, it was decided that we would get someone to take charge and after two or three months of discussion, they suggested that I take charge of it. I expended \$1250 to one person who had charge and I have another contract for \$1,000 but when the benefit- were assessed they were reduced and under that contract I paid \$750.

Q. You paid that to another person? A. \$750 yes, and to another party I paid \$500, at least I was to pay \$500 but it was reduced like the other one to \$350. When I settled with Mr. Hensey I had

63 a memorandum made of my expenses and what I was obligated for and it amounted to over \$3200 and the amount he paid me was \$3800. I had a memorandum when I settled with every expense I was under. It was when I was abroad that the syndicate notified me that they would dispense with my services and this was entirely agreeable to me, but later they came to me and insisted that I continue to take charge of the whole matter.

Q. Did you not personally receive any of that money for your own services?

Mr. MERILLAT: I object on the ground that the Auditor has ruled that we cannot go into this matter of legislative expenses.

The AUDITOR: The objection is overruled.

Mr. MERILLAT: I note an objection on the ground that we have been refused permission to go generally into the item of legislative expenses.

A. Yes.

Q. How much did you receive? A. \$600 and I want to say here if I had kept an accurate account of the moneys I expended I expended more than \$500 more than I received.

Mr. MERILLAT: I object, and move to strike out.

By Mr. MERILLAT:

Q. You are a former member of Congress? A. Yes.

Q. Who were these people to whom you paid out the moneys on account of this matter? A. L. P. Q. Washington, a former newspaper correspondent; George Hazelton, I have a written contract with him, he was a former member of Congress, George Gilliland.

64 Q. Wasn't he a former newspaper man? A. To some extent, he was Mr. Brice's Secretary.

Q. He was at that time Secretary to Senator Brice of Ohio? A. Yes.

Q. How much did you pay him? A. My contract was for \$500, but when the assessment was made it was reduced to \$350.

Q. How much did you pay L. P. Q. Washington. A. \$1250.

Q. What if any arguments did Mr. Gilliland or Mr. Washington

make before any Committees of Congress to your knowledge? A. They were before the Committee several times, the first work we did was to get the people out there to see that there was no improvements, when we asked for the expenditure of so much money out there it was turned down, then we had to work to get the Members and Senators out there to see that it would be a main drive to Soldiers' Home. I know when it was in conference we worked two nights to keep it in the conference and not thrown out—

Q. Their services were personally with the Members and Senators?
A. Yes.

MELVILLE D. HENSEY having been sworn testified as follows:

Q. Does this stock certificate represent your interest in the ten syndicate? A. Yes.

65 Mr. LYON: I offer that certificate No. 1, in evidence, with the endorsements thereon.

Mr. MERILLAT: We desire to object to the certificate and to the endorsements thereon as not in accordance with the provisions of the deed in trust under which the trustees could exercise their powers or in accordance with the provisions of the declarations of the trust itself.

By Mr. LYON:

Q. State whether or not this was ever given for collateral security for any loan made you? A. Yes, the first loan was \$500, the date of that loan I could not state exactly, unless there is something on the document to refresh my memory.

Q. How far back was it?

Mr. MERILLAT: We shall object on the ground that the best evidence is the loan and the papers made at the time of the loan?

Q. Do you know where the note is that was given originally?
A. No, it was along in 1900 the first half of the year.

Q. What was the amount of the loan? A. \$500.

Mr. MERILLAT: We object to all these questions.

The AUDITOR: The objection is over ruled.

By Mr. MERILLAT:

Q. Was that loan of \$500 evidenced by a note? A. Yes.

Mr. MERILLAT: We object on the ground that the best evidence is the production of the note.

66 By Mr. LYON:

Q. Where is the note? A. I have no idea, I presume it was destroyed when the new note of \$822 was given.

Q. Have you made a search for it? A. No, I never was called upon for it before.

Q. Will you make a search for it? A. Yes.

Q. Was any further loan made to you? A. Yes, October 27, 1904 a new note for \$822 was given taking up the old \$500 and the rest was a further advance.

Q. From whom did you receive that loan? A. Thomas G. Hensey.

Q. State whether General Bussey had anything to do with the making of that loan? A. I could not say that he had, I had no talk with him about it and I was not present at the time of the transaction.

By Mr. MERILLAT:

Q. Who kept the books of the ten syndicate? A. I don't know sir.

Q. Did you ever see them? A. I may have, I don't recall.

Q. Did you ever talk with Cyrus Bussey concerning the affairs of the ten syndicate? A. Yes, I did along in 1891 and 1892.

Q. Did you ever talk with him after January 1, 1900? A. Not to my recollection.

67 Q. Do I understand that you did not talk with him concerning the affairs of the ten syndicate from January 1, 1900 to the present time? A. I don't think I ever talked with General Bussey about the ten syndicate after 1900 that I remember.

Q. Did you talk with him in the year 1900? A. No sir.

Q. Were you present at any meetings of the ten syndicate held concerning the extension of Rhode Island Avenue? A. I think that I was.

Q. Were you present at any meetings concerning the matter of benefit assessments or damages? A. Yes.

Q. Was General Bussey present at any of those meetings? A. I don't recall that he was.

Q. Have you any recollection that he was not? A. My recollection is that he was not.

Q. Was General Le Fevre present at those meetings? A. Some of them, I think most of them, I don't think I attended all of them myself.

Q. Was this money that you received or loaned on your share of stock of the ten syndicate paid you by check? A. I don't at this time remember.

Q. Have you any knowledge or recollection to say that it was a check. A. Except that I got \$500, what the modus operandi is I don't know.

Q. As to the additional amount that you got on October 27, 1904 over and above this \$500 was that given in check or 68 cash? A. My impression is that it was money but I would not be able to state positively one way or the other.

Mr. MERILLAT: We desire to call on the administrator to produce the checks stub books and bank books of Thomas G. Hensey for the month of October 1904 and also for the money of April 1900.

Mr. WHITE: In answer to the call the administrator said to me that he made a thorough search for every thing relating to the ten syndicate in the office and home of Mr. Hensey and that he is unable to find anything else than what he has already produced.

Mr. DARLINGTON: This closes our testimony on behalf of the intervening petitioners with the exception of producing the note referred to by Mr. Hensey if he is able to find the same.

Adjourned subject to notice.

RICHARDSON
vs.
HENSEY.

WEDNESDAY, *October 9, 1907*—2 p. m.

Hearing pursuant to notice.

Present: Messrs. Darlington, Richardson, Merillat, Lyon, and White.

Mr. WHITE: I produce this paper as of date the 21st of May 1907 purporting to be signed by Cyrus Busey and Thomas G. Hensey, at the request of Mr. Richardson. It was brought to me by the administrator of Thomas G. Hensey deceased with other papers.

69 It is admitted that the signatures are those of Cyrus Busey and Thomas G. Hensey.

Mr. RICHARDSON: We desire to offer this paper in evidence the paper referred to by Mr. White dated May 21, 1906, signed by Cyrus Busey and Thomas G. Hensey.

Mr. DARLINGTON: I object to the paper as I assume it to be offered as a contradiction of Mr. Busey's testimony that he had any knowledge of the times these loans were made, and I object on the ground that no foundation has been laid nor has he been interrogated about it. He is now in Iowa. I object on the further ground that the statement at that time, which is not the date the loans were made, is no evidence that he knew anything as to when the loans were made.

The AUDITOR: The objections are reserved.

Mr. MERILLAT: We would like to have the opportunity to interrogate Mr. Busey in regard to this paper.

WILLIAM B. HIBBS having been sworn testified as follows:

By Mr. RICHARDSON:

Q. What is your occupation? A. Banker and broker.

Q. Do you know Cyrus Busey? A. Yes.

Q. How long have you known him, since 1899? A. Yes.

Q. From that time to the present time? A. Yes.

70 Q. Will you state whether or not he was in your office more or less subsequent to 1899? A. I do not think he has been.

Q. Is it not a fact that he was in your office subsequent to 1899 frequently in the forenoons?

Mr. DARLINGTON: I object as leading cross-examination of his own witness.

The AUDITOR: The objection is sustained.

Q. Will you state whether or not you have any recollection of Mr. Busey being in your place of business? A. I don't recall seeing Mr. Busey of recent years, I used to see him frequently when I was in the office next door to where I am now, I have been in the present office nine years I don't remember his coming to my present office, I have not seen him around for a number of years.

Q. When is the last time you recall seeing him? A. I don't know, I could not state.

Q. How long ago? A. I don't know.

Adjourned subject to notice.

RICHARDSON
vs.
HENSEY.

MONDAY, November 11, 1907—10:30 a. m.

Hearing pursuant to notice.

Present: Messrs. Richardson, Merillat, Darlington and Lyon.

General CYRUS BUSEY is recalled.

By Mr. RICHARDSON:

Q. I show you a signature which purports to be yours on a paper dated the 21st of May 1906, purporting to be the report of the trustees and I ask you if that is your signature? A. Yes.

71 Q. You signed it? A. Yes.

Q. Did you sign it as it purports, before a Notary Public under oath? A. I presume I did.

Q. I also show you another and similar paper attached with the other and ask you if that is your signature? A. Yes.

Q. That also purports to have been sworn to before a Notary Public? A. Yes.

Q. State whether or not that was sworn to by you? A. Yes.

Q. These statements were sent were they not to the various subscribers or stockholders of the Syndicate? A. I do not know. On the 7th of March we met to settle the affairs of the syndicate and that paper was sent to me for my signature, I was notified that it was necessary to make an explanation as to the interests of the parties named in it.

Mr. RICHARDSON: I object to any further statement of the witness in regard to this paper.

A. (Continuing:) In signing that paper I did not intend for a minute to assume.

Mr. MERILLAT: I object to any statement as to his intention.

The AUDITOR: The objection is sustained.

A. I considered the affairs of the syndicate were already settled.

72 Mr. MERILLAT: I object and move to strike out.

The AUDITOR: The objection is sustained.

Q. Do you recall an interview which you had at the office of Mr. Lyon about a year ago when General Le Fevre was present and Mr. Merillat spoke to you? A. Yes.

Q. On that occasion did you not say to Mr. Merillat that you had loaned money before, money of the syndicate to Mr. Hill? A. I did not.

Q. And as you had formerly loaned money and as the money was in the possession of the trustees and not bearing any income when Mr. Hensey came to you you thought it would be wise to get some income on the money and put it out at interest and therefore you concluded to agree to loan it to Mr. Hensey on his shares in the syndicate. A. In the first place no money was ever in my possession as a trustee; as Mr. Hensey had the money in his possession and Mr. Hensey on one occasion told me that they were building some houses on other property and he could loan the money and thereby get a revenue out of the money.

Q. When was that? A. I have no idea. I distinctly said to Mr. Merillat in the presence of Mr. Lyon that I knew nothing about any loan having been made on stock of the Company.

Q. When was that interview of which you have just spoken with Mr. Hensey? A. I could not tell you.

73 Q. Prior to the time the money was loaned? A. Sometime prior a long time prior, at that time my health was in such condition, as it is now, I got up out of a sick bed to come here to day.

Q. Was it several years prior? A. I could not tell you when it was, I remember once he spoke to me about having some building out there and about loaning some money on the houses.

Q. What houses do you refer to? A. The houses of another syndicate.

Q. The Le Droit Park Syndicate, Florida Avenue houses? A. Yes, I think so.

Q. Tell us what he said? A. It was not an interview for the purpose of authorizing the loan of the money, it was incidentally he mentioned the fact that he thought he could loan the money and get some interest on it. I was insisting on Mr. Hensey selling the property every time I talked with him I was urging him to sell it, I did not consider it of much importance to loan the money, I never took any interest in loaning the money and was not advised of anything that he did in the transaction.

Q. On these occasions when you had these conversations with Mr. Hensey and particularly in respect of this conversation as to loaning the money in connection with the Le Droit Park houses, what did you tell him? A. I don't remember saying anything especially to him, he simply told me he thought he could loan the money and I don't remember that I said anything particularly about it, I remember that I was willing that he should loan it.

74 Q. Did you ever see Mr. Hensey after that occasion? A. I met him occasionally.

Q. Did you ever renew that conversation? A. We never did.

Q. Did you on your part ever suggest it or renew that conversation? A. No.

Q. After that conversation did you as a matter of fact ever inquire of Mr. Hensey whether or not he had loaned any of the syndicate money? A. No, I never did.

Q. You have stated in your testimony to day that as a matter of

fact you never had any of the Syndicate money in your hands, you had the United States draft in your hands, didn't you? A. No.

Q. You endorsed it? A. Mr. Hensey had it, and I wrote my name on it.

By Mr. DARLINGTON:

Q. Your attention has been called to the certificate in duplicate purporting to have been signed and sworn to on the 21st of May 1906, who prepared that paper? A. I don't know, it was prepared by Mr. Hensey, I suppose.

Q. How did it come to you? A. He sent it to me for my signature, I suppose the whole thing was settled, and all that was necessary was to sign that paper and we would get our money in a couple of weeks.

75 Mr. MERILLAT: I object to this disavowal of the paper that is under oath.

Q. Where were you when this paper was sent to you? A. In my house about that time I was in bed, for three months in the spring of 1906 I was not able to go to the dining room for my meals and did not do any business whatever of any kind.

Q. This affidavit cites "that said sum (referring to \$2722.50) was loaned by the Trustees on the following dates etc.," was your attention called to that particular phraseology of the certificate. A. It was not.

Mr. MERILLAT:

Q. Did you read the paper? A. I don't know that I did.

Q. You knew that you were swearing to a paper, didn't you? A. I was told by the person presenting it what was desired, that they wanted to make an explanation in regard to the interests of the parties, I was in just such a condition that I did what they asked me.

Q. You knew the person who presented the paper to you? A. I could not tell you.

Q. It was not Mr. Hensey? A. I don't remember.

Q. Wasn't it the notary public? A. I think so.

Q. Did you know the notary? A. I was not personally acquainted with him.

76 Q. F. G. Rose? A. I don't know.

Q. You knew that the paper was being sworn to as an affidavit? A. I suppose so, the whole thing was brought to me.

Q. Where were you when you signed that paper? A. I- my room 1204 N Street.

Q. In bed? A. I don't know whether I was in bed or not.

Q. Any one present besides the person who came with this paper? A. I could not tell you that.

Mr. MERILLAT: I desire to offer these two papers in evidence and to have one copied into the record, as follows:

Bussey and Hensey, Trustees in Trust, Lots 11 and 12, Block 12,
Le Droit Park.

Affidavit.

We hereby certify that the amount not included in disbursements received for damages in the Rhode Island Avenue extension matter was \$2722.50; that said sum was loaned by the Trustees on the following dates, and the amounts to shareholders as follows: April 24, 1900, W. H. Hills, \$500.; April 27, 1900, M. C. Hooker \$500.; October 27, 1904 M. D. Hensey \$822.50 October 27, 1904, T. G. Hensey, \$900.

That no loans have been made since October 1904, as above stated nor have any loans been made since the institution of Equity Cause 26121 to anyone from said fund.

The statement furnished and audited by E. J. Pullman, Benjamin Le Fevre, M. C. Hooker and Cyrus Bussey on the 7th of March 77 1906 and in pursuance of said settlement, the interests of said T. G. Hensey, M. D. Hensey, M. C. Hooker and W. H. Hills, being in possession of the Trustees were surrendered and the interests of the said Hensey ceased on said stock, balances due Hills and Hooker as reported in said statement.

CYRUS BUSSEY.
THOS. G. HENSEY.

Subscribed and sworn to before me this 21st day of May A. D. 1906.

[SEAL.]

FRED. G. ROSE,
Notary Public.

CHARLES H. MERILLAT, having been sworn, testified as follows:

By Mr. RICHARDSON:

Q. You may state if you recall an interview which you had with General Bussey in Mr. Lyon's office about a year ago? A. I had an interview there at Mr. Lyon's request with Mr. Bussey and General Le Fevre.

Q. State whether or not at that interview General Bussey said to you that he had loaned money of the syndicate on other occasions to Mr. Hill? A. General Bussey said that Mr. Hensey came to him and said he wanted to borrow money on his share in the syndicate and that Melville D. Hensey also went to increase the loan as I remember it now on his share of the syndicate that he knew nothing whatever about this suit against the Henseys and Hooker that he had been in ill health for sometime and that the trustees 78 previously had loaned on the shares of the syndicate and that as they had money on hand which was drawing nothing he thought the loan would be well secured and he had authorized the loan to be made to Mr. Hensey on his share in the syndicate, thereupon I interrupted that on his own statement he was liable as he had no authority—

Mr. DARLINGTON: I object.

A. (Continuing:) He had no authority to loan the money of the syndicate on the share and that as trustee he was responsible for having so done, the conversation became rather heated and continued for sometime and subsequently General Bussey said that—

Q. At the same interview? A. Yes, that Mr. Hensey had come to him and wanted to make a loan on real estate and I interrupted him and told him that he was now varying his statement, it was not what he had said before that previously he had stated that Hensey wanted to loan the money on his share of the syndicate and that now he was switching about to making a loan on real estate generally.

Mr. DARLINGTON: I move to strike out what the witness told General Bussey.

Q. Please state what General Bussey replied in answer to your statement? A. Thereupon General Bussey denied ever previously stating that he had loaned money upon shares of the syndicate and I told him just in a short time before.

Q. State what statement General Bussey made? A. The interview terminated at that point where he had denied what I told him was his previous statement and I left the room.

79 By Mr. DARLINGTON:

Q. So that the controversy arose then and there as to whether you had properly heard what General Bussey had said? A. General Bussey denied that he had previously stated that Hensey came to him and asked him to loan him money on his share of the syndicate.

Q. The whole interview occurred in the hearing of Mr. Lyon? A. Yes.

Q. What efforts if any did you make to corroborate your recollection by Mr. Lyon's? A. At that very time I turned to Mr. Lyon and said that Mr. Lyon had heard him make the statement, but Mr. Lyon didn't enter into that conversation at all as I remember it he did not make any response.

Q. Did you ask Mr. Lyon for his recollection? A. No, it all occurred right there in his presence and I turned and said to him that he had heard General Bussey make that statement right in his presence.

Mr. SIMON LYON, having been sworn, testified as follows:

By Mr. DARLINGTON:

Q. Do you recall an interview between Mr. Merillat and General Bussey in your office in regard to which Mr. Merillat has testified? A. Yes.

Q. What was said by General Bussey about his having or the trustees having loaned money on the share of Mr. Hills? A. Nothing was said whatever.

80 By Mr. RICHARDSON:

Q. Do you recall that Mr. Merillat turned and addressed you and asked you if you heard the statement made in your presence?

A. I will say that, if you will allow me to explain, the sole object of the meeting was for the purpose of determining some method by which this fund in the hands of the Columbia Title Company could be distributed among the members of the Ten Syndicate, General Bussey and I as his attorney thought that the fund should be distributed without further delay there being no liability on the part of General Bussey in the matter of the alleged loans made through certain members of the Ten Syndicate and I remember distinctly that Mr. Merillat expressed the opinion that there was some liability on the part of General Bussey in the matter and I remember distinctly that there was no conversation as to loans made to members on their stock certificates but there was something in the run of conversation about General Bussey being approached by Mr. Hensey at one time relative to the making of a loan to be secured by a certain deed of trust for the construction of certain houses.

Q. There was some statement then about loans? A. That was all.

Q. What was said in reference to the loan for the building of houses? A. I paid no especial attention to that matter as the meeting then abruptly adjourned because no conclusion could be reached it being apparent that Mr. Merillat could not accomplish his desire to have the money paid into his hands for the benefit of the complainant.

81 Q. Didn't Mr. Merillat then and there accuse General Bussey of changing his statement? A. I don't recall, I am satisfied that no such discussion arose in my presence.

Q. Didn't the meeting get excited at that point? A. My recollection is that there was no undue excitement it merely adjourned because it was apparent that no compromise nor any satisfactory conclusion could be reached between the parties in interest.

Q. Didn't Mr. Merillat at that interview say to General Bussey that he was legally liable on his own statement? A. I don't recall that.

Q. Was any statement to that effect made in your hearing? A. It has been about a year ago but the best of my recollection no such statement was made.

Q. What was the statement made in respect of the loan being made on the Le Droit Park houses? A. Nothing further than as I have stated Mr. Merillat was trying to draw out some information from General Bussey for the purpose of getting General Bussey to give the impression that he had consented, directly or indirectly to the making of certain loans for the members. I didn't pay any special attention to it except I remember that run of conversation, but I do remember distinctly that nothing was stated about his consenting to the loan on the share of stock of the syndicate.

Q. How long did that run of conversation occur? A. Just a few minutes.

82 Q. You say you didn't pay particular attention? A. I remember generally all that occurred in my presence but as I stated before it was apparent that nothing could be concluded and the meeting adjourned.

Q. Was there in that conversation something said about how it

occurred that the money was loaned to Hensey on his stock? A. No.

Q. That was not mentioned? A. No.

Q. Didn't come up in any way? A. No.

Q. Didn't General Bussey say he had been approached by Mr. Hensey? A. Yes, I remember General Bussey did say that he had been approached by Mr. Hensey for his consent to the making of loans secured by deed of trust of real estate for the purpose of constructing certain houses.

Q. What was said? A. I don't remember exactly, but I know Mr. Merillat was trying to give the general impression that because General Bussey was a trustee he should be held liable for the affairs of the syndicate.

Q. Upon what did he base the statement that General Bussey would be liable? A. I don't recall now.

Q. Do you mean to state then that there was not something said specifically in reference to the loan of money by the trustees upon Mr. Hensey's stock certificate being the very matter which we have now in litigation? A. I do.

Q. Nothing was said on that subject? A. No.

83 Mr. LYON: We have nothing further to offer.

Adjourned to Tuesday, November 19, 1907, at 10 A. M.

TUESDAY, November 19, 1907—10:30 a. m.

Hearing pursuant to adjournment.

Present: Messrs. Richardson, Darlington, Lyon and Merillat.

FRED G. ROSE, having been sworn, testified as follows:

By Mr. RICHARDSON:

Q. What is your business? A. I am in the life insurance business and a notary public.

Q. Were you a notary public May 21, 1906? A. Yes.

Q. I show you this paper and ask you whether or not that paper was executed by you, this paper being heretofore offered in evidence and signed by General Bussey and Thomas G. Hensey and dated May 21, 1906. A. I took the acknowledgment.

Q. You may state whether or not you have met Cyrus Bussey? A. Yes.

Q. State where you were introduced? A. In Mr. Hensey's office.

Q. By whom were you introduced? A. By Mr. Hensey, who died here.

Q. Where was his office? A. The fourth floor of the G Street side of the Colorado Building.

Q. When was that? A. I could not positively state, I 84 met him two or three times.

Q. Where is your office? A. 208 Colorado Building.

Q. You stated you met him on two or three occasions where else did you meet Mr. Bussey? A. At my office and Mr. Hensey's office, I don't know where else I may have met him.

Q. Can you state where this affidavit was taken? A. No, I cannot, whether it was at the office or where it was.

Q. Do you know where General Bussey lived? A. I could not positively say.

Q. Were you ever at his house? A. I don't know.

Q. Have you any recollection of ever being at 1204 N Street N. W.? A. No, I have not.

Q. Do you know what was the physical condition of Mr. Bussey when this paper was signed by him? A. I remember him as being an elderly man with a grey beard, but his physical condition, I could not state.

Q. Do you know whether or not Mr. Bussey read and knew the contents of this paper? A. I asked him whether he had read it of course, I always do.

Q. What answer did you get? A. That he had read it of course, that it was his act and he acknowledged it to be his act.

85 By Mr. DARLINGTON:

Q. How long have you been a notary? A. Since February 1905 or 1906.

Q. In the course of that time you have taken a great many affidavits? A. Yes, a good many for the Company and the real estate men around there.

Q. Is it in cases of affidavits or deeds where you ask if it is their act or deed? A. Well I invariably ask if it is their act, if they have read the paper and whether they acknowledged it.

Q. In cases of affidavits or deeds? A. I suppose it is more proper in the case of deeds but I generally follow the custom.

By Mr. RICHARDSON:

Q. In administering the oath what do you ask the witness?

Mr. DARLINGTON: I object.

Mr. RICHARDSON: I withdraw the question.

Mr. RICHARDSON: We close our proof.

Adjourned for argument to Saturday, November 30, 1907, at 10 A. M.

FRIDAY, December 27, 1907.

Hearing pursuant to notice of counsel for the trustees of the Le Droit Park Syndicate for the hearing of a motion to open the reference for the purpose of receiving further proof to be offered by them.

Present: Messrs. Merillat, Richardson, Darlington and Lyon.

86 The motion to open the reference was presented and argued by counsel whereupon the motion was granted by the Auditor and the hearing set for Friday, January 3, 1908 at 10:30 A. M.

FRIDAY, January 3, 1908—10:30 a. m.

Hearing pursuant to adjournment.

Present: Messrs. Merillat, Richardson, Lyon and Darlington.

Mr. MERILLAT: We desire to offer in evidence a statement of taxes paid between the years 1893 and 1900 inclusive, prepared by the office of the Collector of Taxes and agree that it may go in to have the same force and effect as if the original books were produced.

Mr. DARLINGTON: But with objections to its competency and probative force.

Mr. MERILLAT: We also desire to offer in evidence a memorandum from the office of the Recorder of Deeds showing releases of lots 11, 12, and 13 from the date of acquisition by Melville Hensey up to and including the year 1900, the memorandum to have the same force and effect by stipulation as would the actual production of the deeds themselves.

Mr. DARLINGTON: We object to these papers on the ground that nearly all of them relate to transactions anterior to the date of the controversy 1891 and that the others throw no light on the questions of this case.

Mr. MERILLAT: We desire to state that where any deeds are offered anterior to the formation of the Le Droit Park Syndicate, it is for the purpose of showing the existing state of trust upon the property at the date of the formation of the Le Droit Park Syndicate, February 1893, and for the purpose of showing what payments in reduction of the indebtedness of the Ten Syndicate were made subsequent to the formation of the Le Droit Park Syndicate; by Le Droit Park Syndicate, I mean the syndicate of which Hensey and Hooker were trustees as distinguished from the Ten Syndicate of which Hensey and Bussey were Trustees.

For the purpose of your Honor's conveyance I will read and put in this record certain pages of the testimony taken in Equity No. 24,084.

Mr. DARLINGTON: We object to this on the ground that it is testimony taken in a case of which we were not parties and consequently had no opportunity of cross-examination.

Mr. MERILLAT: We desire to offer in evidence from the testimony taken in No. 24,084 evidence that relates to the Ten Syndicate pages 580 to 582 and pages 722, 739, 747 et seq.

Mr. DARLINGTON: We make the further objection that even if it were competent to create a lis pendens against the parties by including in a bill property they are interested in without process or other efforts to make them parties to the bill, every line of testimony referred to was taken before the amendment was filed in this cause.

Mr. E. J. PULLMAN having been sworn testified as follows:

88 By Mr. MERILLAT:

Q. You were subpoenaed to produce your check stub books showing payments made by you to Hensey and Bussey Trustees or either of them on account of your interest in the Ten Syndicate, which

held lots 11, 12 and 13 block 13 Le Droit Park, will you produce them? A. I admit paying them without reference to the check books, the check stub books run back to 1894.

Q. Will you please state whether or not you received from time to time from Hensey and Bussey Trustees notices of assessments or calls for payments on account of your interest in the Ten Syndicate between the years 1893 and 1900 inclusive? A. I paid interest and taxes.

Q. Did you make payments during these years to them on account of your interest?

Mr. DARLINGTON: I object unless the notices are produced.

Q. Have you copies of those notices? A. Not that I know of, if I have, I don't know where they are, all the information I have is the memoranda in the stub book.

Q. Those are all the memoranda you are able to find in regard to the matter? A. Yes.

Q. Please state whether or not those lots, 11, 12, 13 Block 13, are improved or unimproved and whether the property was improved between the years 1893 and 1900? A. I paid very little attention to that property, I never saw the lots so I don't know.

89 Q. Where are the checks? A. Destroyed.

Q. State whether or not the subpœna duces tecum which was served on you called on you to produce the checks themselves and whether you have been able to produce the checks?

Mr. DARLINGTON: I object to what the subpœna called for.

Q. Have you made a search for the checks themselves? A. I have not made a search, I never keep checks more than a year or so, they become dead property and I destroy them.

Q. Have you been able to produce your check stub book for 1893? A. No, that is the first one I have.

Q. What do you mean by saying that is the first one you have? A. I can find nothing back of that.

Q. Of what year is the earliest check book which you have been able to find? A. 1894.

Mr. MERILLAT: I desire to offer in evidence from the check book of Mr. Pullman marked March 14, 1894, to June 6, 1894 the entry No. 1248 April 7, 1894 M. D. Hensey, semi-annual interest on Bussey and Hensey Syndicate \$21.

Q. Please state whether or not you were a member of any other syndicate of which Bussey and Hensey were trustees other than the Ten Syndicate? A. Not at that time.

90 Mr. DARLINGTON: We object to this entry as not being proof of anything.

Mr. MERILLAT: We also desire to offer in evidence this entry No. 1412 Oct. 6, '94, Bussey and Hensey trustees int. L. D. Syn. \$21.

Mr. DARLINGTON: I make the same objection.

Q. I find no check stub book for the years 1895 to 1896; please state whether or not you made a search for that? A. I searched

over my check book stubs and those are the only ones I find entries in.

Q. Please state to the best of your knowledge, recollection and belief whether or not you paid assessments for your share of the Ten Syndicate during 1895 and 1896, you being unable to find any check stub book or other memorandum?

Mr. DARLINGTON: I object on the ground that the witness did not state he could not find that check stub book.

Q. Please state whether or not you made a search for your check stub book or checks for the years 1895 and 1896? A. I searched all my books.

Q. Have you been able to find your check stub books for those years? A. I did not find them.

Q. Now please state to the best of your knowledge, recollection and belief whether or not you paid assessments for your share 91 of the Ten Syndicate during 1895 and 1896, you being unable to find any check stub book or other memorandum?

Mr. DARLINGTON: I object further as his belief would not be evidence.

The AUDITOR: The objection is sustained.

Q. State to the best of your recollection whether or not you made any payments on account of assessments made by Bussey and Hensey Trustees on your interest in the Ten Syndicate during the years 1895 or 1896? A. I have always paid assessments when they were due consequently I am positive I paid them, I paid all assessments that were made against me.

Mr. DARLINGTON: I object and move that it be excluded.

Q. State to the best of your recollection whether or not assessments were made on account of your interests in the Ten Syndicate during the years 1895 and 1896? A. I have no recollection about it, I could not say positively, but I presume they were.

Mr. DARLINGTON: I object to the last part of the answer.

The AUDITOR: The objection is sustained.

Mr. MERILLAT: We desire to offer in evidence these entries No. 2237, May 3, '97 Bussey and Hensey Trustees L. D. Pk. Syn. interest and taxes semi-annual \$34.17.

No. 2404 October 27, 1897 Bussey and Hensey Trustees interest and taxes on Le Dr. Pk. Syn. \$28.09.

No. 2577 April 28, 1898 Bussey and Hensey Trustees Le Dr. Pk. Syn. \$28.09.

92 No. 3025 October 31, 1898 Bussey and Hensey Trustees L. D. P. Syn. semi-annual interest and taxes \$28.09.

No. 3173 April 28, 1899 Thomas G. Hensey Trustee interest etc. Bussey and Hensey Syndicate \$28.09.

No. 3318 October 28, 1899 Thomas G. Hensey Trustee L. D. P. lots \$28.09.

Mr. DARLINGTON: I make the same objection to all of these entries.

Q. Now Mr. Pullman please state whether or not during these years you were a member of any other syndicate in Le Droit Park of which Bussey and Hensey were trustees, other than the Ten Syndicate? A. Not to my knowledge.

Q. Please state in what manner your checks were made out where the check stub book shows a certain form of entry as for example Bussey and Hensey trustees. A. They were probably made out to those names as trustees.

Mr. DARLINGTON: I object to the answer as incompetent.

Q. Please state your recollection as to whether or not your checks were made out corresponding with the check stub book entries?

Mr. DARLINGTON: I object.

Q. Please state whether or not you have any recollection as to whether or not the checks were made out to correspond with the entries shown on the check stub book?

Mr. DARLINGTON: I object.

Q. Please state whether or not you have any recollection as to whose order the checks were drawn in the instances which 93 have been read from the check stub books? A. It could hardly be expected that I would recollect anything that happened as long ago as that but it is my habit to make out the stub as I make out the check.

Q. Please state whether or not refreshing your recollection by these entries themselves and speaking also from your knowledge of your method of doing business you are able to state to whose order the checks themselves were drawn?

Mr. DARLINGTON: I object.

Q. Please state whether or not the check stub book does refresh your recollection as to whose order you made out the checks themselves. A. I can only answer by assuming that this is a copy of the check.

Mr. DARLINGTON: I object.

By Mr. DARLINGTON:

Q. You are the holder of one share in this Syndicate? A. Yes.
Adjourned subject to notice.

MONDAY, *January 15, 1907*—1 p. m.

Hearing pursuant to adjournment.

Present Messrs. Richardson, Merillat, Darlington, Lyon and White.

94 Mr. EDWIN L. WILSON having been sworn testified as follows:

By Mr. MERILLAT:

Q. Please state whether or not you are an examiner in chancery and as such examiner you took the testimony of Mellen C. Hooker

in Equity No. 24084 Richardson vs. Hensey et al? A. I am an examiner in chancery and I did take Mr. Hooker's testimony in that case.

Q. Please state to the best of your recollection what if any statement he made as to his interest in the Ten Syndicate and any payments made by him on account of that interest between the years 1893 and 1900 both inclusive.

Mr. DARLINGTON: I object to the testimony as against any person except Mr. Hooker.

The AUDITOR: The ruling is reserved.

A. Well that has been four years since Mr. Hooker gave that testimony and I have no independent recollection of it except I know this that I was present and took his testimony as he gave it, and correctly transcribed it into typewriting.

Q. Please state whether or not you have made a search for your original stenographic notes in the place where you are accustomed to look for and find those notes? A. I have on two occasions, I think received the su-pœna on Friday or Saturday and on Saturday I looked through my notes and then again yesterday, I had occasion to go to my office and I looked again and I could not find Mr.

95 Hooker's testimony. About every year or so I go through my notes and what I think I won't need, I throw away to save space and about a year ago I remember I went over my notes and threw a good deal of old notes that had accumulated and which I thought were no good away, I think possibly Mr. Hooker's testimony was destroyed at that time.

Q. Please state whether or not his book of testimony contains a correct transcript of the notes of the examination of Mellen C. Hooker as taken by you at that time?

Mr. DARLINGTON: I object as incompetent.

Q. Please examine this book which I hand you pages 197 and 198 and state whether or not that serves to refresh your recollection as to what if anything Mellen C. Hooker said as to having given a check or made a payment on account of his assessment in the Ten Syndicate after February 19, 1893. A. I can say in reading it over that it gives me a general recollection of what was given before me at the time, but as to saying that I remember distinctly that he testified aside from that the fact that I remember that I took down what he said correctly and transcribed it correctly. The testimony in this case ran over six months and when the testimony was written up it went out of my mind and I got into other cases. I do remember this that some of the other testimony in this case was dictated to me on the typewriter I remember this testimony myself and afterwards I went over my notes—

Mr. DARLINGTON: I object.

Q. State whether or not the transcription of testimony which has

96 been handed to you is a correct transcription of the testimony as given by Mellen C. Hooker at the time and taken down by you and whether or not it was correctly transcribed by you from your notes? A. It was.

Mr. MERILLAT: We desire to offer in evidence the testimony relating to this matter, pages 197 and 198 beginning on page 197 with the question, "Mr. Hooker I will ask you to state whether or not you made the following Citizen's National Bank's checks," and ending at the bottom of page 198 with the answer, "It is to be the best of my knowledge and belief," in book marked Defendant Hooker's proof.

Mr. DARLINGTON: I object to this testimony. Mr. Hooker is here and this may be an entirely unnecessary controversy.

By Mr. DARLINGTON:

Q. This testimony was taken stenographically? A. Yes.

Q. Stenographers sometimes make mistakes? A. Yes.

Q. In their notes and also in their transcriptions? A. Yes.

Q. Have you any reason for supposing that some mistake may have occurred in the taking of this testimony and the transcription of your notes? A. I have no reason to think there was a mistake made.

Q. Or that there was not? A. Yes, I have.

97 Q. Why? A. Because I went over that transcription myself with my notes and made corrections of the mistakes found in it and I turned the transcription over to the counsel and they went over the testimony and they also turned it over to Mr. Hooker's counsel who was Judge Weed at that time.

Q. Are you basing your testimony on what some other people did in the way of comparison? A. To that extent.

By Mr. MERILLAT:

Q. What if any objection did Defendant Hooker's counsel make as to the accuracy of the testimony? A. Never anything was said except that it was correct.

By Mr. DARLINGTON:

Q. What did counsel compare it with, if you know? A. They could not have compared it with my notes.

Q. What did they have? A. Nothing as far as I know.

FRANK McCLELLAND, having been sworn, testified as follows:

By Mr. MERILLAT:

Q. State your residence and occupation? A. I am a clerk in the Gas Office.

Q. State where you live and how long a time you have lived at your present residence. A. 301 Rhode Island Avenue, N. W. It used to be 1800 3d street.

98 Q. Is that in the neighborhood of block 12, Le Droit Park, being the block from 2d to 3d streets and from Florida Avenue north? A. It is the next square west.

Q. For how long have you been living there? A. All my life.

Q. Are you familiar with the vicinity around your place of residence? A. Yes.

Q. State if you can whether or not lots 11, 12, and 13 block 12 Le Droit Park were improved or unimproved between the years 1893 and 1900 both inclusive? A. I don't know the lots by numbers.

Mr. DARLINGTON: It is admitted that those lots were unimproved between 1893 and 1900 both inclusive.

MELLEN C. HOOKER, having been sworn, testified as follows:

By Mr. MERILLAT:

Q. You were subpoenaed to produce your checks and check stub books showing payments on account of your interest in the Ten Syndicate between the years 1893 and 1900 both inclusive, have you your checks and check stub books with you? A. I think there is a little error in the subpoena this says between the years 1893 and 1900 both inclusive.

Q. Have you the checks for the year 1893? A. After reading that over two or three times, I concluded that you wanted the checks for the whole term from 1893 to 1900 and both years included
99 and I looked over my check- and stubs (witness hands stub books to counsel) I do not find any check, I have gone over every thing I have and have furnished everything which I have.

Q. Do I understand from your answer that you have neither the checks nor the stub books for the year 1893? A. I have furnished everything I have that relates to the payments made to that syndicate.

Q. What do you mean by that answer? A. I mean just what I have said.

Q. Do I understand you to say that you have no checks or check stub books showing payments on account of the Ten Syndicate in the year 1893? A. I have nothing except what is there.

Q. For the year 1893? A. I have nothing except what is there, I don't know what the year is now.

Q. Did you examine your checks and check stub books for the years 1893 to 1900 including those years and the intervening years between, 1894 to 1899 to see if you had any checks or check stub books showing payments on account of your interest in the Ten Syndicate? A. I examined every thing which I had, those checks were produced in Court some two or three years ago, maybe longer ago, four years, they were taken out of their package where they belonged and I don't know what became of them. There are the stubs of everything which relates to the Ten Syndicate.

100 Q. What became of the checks for the year 1893 after they were returned to you? A. I don't know.

Q. Were the check stub books produced by you at the hearing? A. I think not.

Q. Have you made a search for the check stub book? A. I have gone through all my check stub books and that is all I have that relates to the Ten Syndicate.

Q. Please state Mr. Hooker whether or not during the years 1893 to 1900 inclusive there was any calls made on you for assessments on account of your interest or share in the Ten Syndicate? A. I have no record except what those stubs show.

Q. State to the best of your knowledge and recollection whether or not there were any calls for assessments made on you on account of your interest in the Ten Syndicate between the years 1893 and 1900? A. I have no record of anything except what those stubs show that you have before you.

Q. Please state whether or not in the month of October 1893 you made payments on account of your interest in the Ten Syndicate? A. I have no record of anything as I stated before except what those stubs show.

Q. I find that in the testimony taken in this original case you produced a check No. 3 for \$278.65 stating that it appears to have been assessment in the Ten Syndicate as there was a little 101 memorandum on the northeast corner to that effect, state whether or not that refreshes your recollection?

Mr. DARLINGTON: I object unless the check is produced or accounted for.

A. It doesn't refresh my recollection with regard to the original transaction.

Q. To what extent does it refresh your recollection? A. With regard to the check on which was some endorsement made as you say on the northeast corner, meaning the upper right hand corner as you hold the check before you.

Q. Please state what if any recollection you have of a call having been made for assessment in the autumn of 1893 wherewith to make a partial payment on account of the principal due on two of the lots held by the Ten Syndicate. A. I don't think there was any assessment made to pay any of the principal of that syndicate after I went into it, there were several assessments made for interest, taxes and such things as that.

Q. What if any fund did the Syndicate have after its original organization wherewith to make payments except through the means of assessments on the parties? A. I had nothing to do with the books and am not able to state anything with regard to that.

Q. Have you any knowledge as a member of the Syndicate of any funds that they had after the original purchase of the land and prior to the condemnation for the extension of Rhode Island Avenue?

102 Mr. DARLINGTON: I object.

The AUDITOR: The objection is sustained.

Mr. RICHARDSON: We note an exception.

Q. Please state whether this is your check stub book showing checks drawn between October 1894 and the last date? A. Yes.

Q. I find in your check stub book an entry No. 91 Thomas G. Hensey \$21 interest on No. 10 Syndicate LeDroit Park and ask you whether or not that check was drawn corresponding to that check stub book entry? A. It certainly was.

Mr. MERRILLAT: We desire to offer this entry in evidence.

Mr. DARLINGTON: I object for several reasons, this check purports to be drawn to Thomas G. Hensey and not to Hensey and Bussey trustees or to Hensey trustee and I submit the stub alone does not prove anything.

Q. What was the number of your syndicate share in the Ten Syndicate? A. I don't know.

Q. Refreshing your recollection by this check stub book please state whether or not the check corresponding to that stub entry was drawn for a payment of a call made on you for assessment on account of your interest in the Ten Syndicate. A. I have no recollection whatever except the stubs.

Q. I hand you check stub book produced by you marked March 7, 1895 to June 7, 1895 and ask you whether or not a check 103 was drawn corresponding with the check stub entry, 156 to Thomas G. Hensey April 25, 1895 for \$21 Bussey and Hensey Syndicate? A. There was.

Q. What if any Bussey and Hensey Syndicate were you in other than the Ten Syndicate? A. Not any.

Q. Refreshing your recollection from your check stub book entry, state whether or not a check was drawn for assessment on account of your interest in the Ten Syndicate? A. It was.

Mr. MERRILLAT: We desire to offer this entry in this stub book in evidence.

Mr. DARLINGTON: I object.

Q. I hand you book marked March 23, 1894 to September 28, 1894 and ask you whether or not a check was drawn corresponding with the stub book entry No. 51 to Thomas G. Hensey April 5, 1894 for \$21 interest on Ten Syndicate? A. Yes.

Q. State whether or not after refreshing your recollection you made a payment on that date on account of assessment due you on your interest or share in the Ten Syndicate? A. I made the check which the stub refers to there.

Q. Refreshing your recollection for what purpose did you make that check? A. Interest.

104 Q. On what? A. Interest on deferred payments, and taxes.

Q. On what? A. The Ten Syndicate.

Mr. DARLINGTON: I object.

Q. I would like you to state whether or not you have lost any of your check stub books or checks or destroyed any of them within the last two years between the dates named? A. There was some of them which I did not find I don't remember when they were destroyed.

Q. Have you destroyed any checks or check stub books covering the period between 1893 and 1900 inclusive that destruction having taken place between the last two years? A. I don't remember the year, some of check stub books have been destroyed, I don't remember what years.

Q. When were they destroyed? A. I don't remember.
Q. Was it in the last two years? A. I don't remember.

Mr. MERILLAT: I offer this last check stub book in evidence March 23, 1894 to September 28, 1894 with the entry referred to in the question.

Mr. J. A. LYNHAM, having been sworn, testified as follows:

By Mr. MERILLAT:

Q. State whether or not you are an examiner in chancery and if as such examiner you took the testimony of Thomas G. Hensey in the equity suit Richardson vs. Hensey et al. No. 105 24,084? A. I am an examiner in chancery and I did take the testimony of Mr. Hensey, but I would like to see the testimony to verify my recollection in that regard. I was employed to take the testimony at the instance of the Defendant Thomas G. Hensey in this case, and I took the testimony of Mr. Hensey in this case referred to, I cannot say that I took all of it for the reason as you perhaps remember at the time in which I was engaged on this, there was a reference to me by Justice Gould of the Eugene Peters case and I went South. I took certain of the testimony of Mr. Hensey and the case went on while I was away and it was necessary for me to have an assistant to take the rest of the testimony, but whether he took any of the testimony of Mr. Hensey, I cannot say.

Q. Can you state on what date you went away in the other matter? A. I cannot say without refreshing my recollection, and I have no data here with which to refresh it.

Adjourned to Wednesday, January 22, 1908, 10:30 A. M.

WEDNESDAY, *January 22, 1908*—1 p. m.

Hearing pursuant to notice.

Present: Messrs. Merillat, Lyon, Darlington and White.

106 JOSEPH PAUL, having been sworn, testified as follows:

By Mr. MERILLAT:

Q. Mr. Paul, please state your occupation and what your occupation was in the years 1893 and 1894? A. I was in the real estate business.

Q. State whether or not at any time you represented A. L. Barber and James McLane? A. I don't know that I was the particular representative of either one of them, but I had been connected with Mr. Barber and I attended to matters in Washington for him when he could not come over here.

Q. Matters connected with real estate, mortgages and other matters? A. I had very little to do for him, occasionally some thing would arise and I would look after it for him, it was not a matter of business but a matter of accommodation.

Q. How about Mr. McLane? A. It was the same way, I did very little for either of them.

Q. Please examine the papers I hand you and state if that is your signature? A. Yes.

Mr. MERILLAT: I desire to offer in evidence this paper being a receipt dated October 12, 1904 for \$90 interest on lot 11 block 12, LeDroit Park.

Q. Please state whether or not that is your signature on the paper I hand you? A. Yes.

107 Mr. MERILLAT: I offer the paper in evidence being a receipt dated April 25, 1905 for \$90 from Thomas G. Hensey on account of interest on lot 11 block 12.

Q. Please state whether or not that is your signature. A. Yes.

Mr. MERILLAT: I offer in evidence that paper, being a receipt dated May 3, 1893 for \$90 received from Thomas G. Hensey interest on two notes for \$1500.

Mr. DARLINGTON: We have no objection to these papers being filed, but we object to them as having any probative force and effect as regards any of the issues in this case as evidence.

Q. Please state for what that was given, that receipt, was given on account of what property? A. It does not specify and I am unable to say.

Q. Please state what if any property other than lots 11, 12, and 13 block 12 Le Droit Park you had dealings with Thomas G. Hensey on account of interest due?

Mr. DARLINGTON: I object.

The AUDITOR: The objection is sustained.

Mr. MERILLAT: I offer the paper in evidence.

Mr. DARLINGTON: I object.

The AUDITOR: It will be filed but not admitted as evidence.

Mr. MERILLAT: I note an exception.

DANIEL WEEDON is recalled.

108 By Mr. MERILLAT:

Q. Please state what if any position you hold in connection with the estate of the late Thomas G. Hensey? A. I am the administrator of his estate.

Q. Please state for what if any length of time you were employed by Thomas G. Hensey or the Thomas G. Hensey Company and in what capacity? A. I was six years and several months connected with him, I had charge of the collections of rents and insurance, etc.

Q. Immediately prior to his death? A. I went there April 8, 1901, and was with him when he died.

Q. Please state whether or not as such administrator you took possession of his effects and papers? A. I have boxes full of papers and books.

Q. As administrator did you take possession of those? A. Yes.

Q. Please state whether or not the papers here produced by you were among the effects and papers you found belonging to Thomas

G. Hensey? A. I turned them over to Mr. Thomas and Mr. Thomas turned them over to Mr. White.

Q. Please state whether or not the papers here produced by you were among the effects and papers you found belonging to Thomas G. Hensey? A. Yes, they are the ones I turned over.

109 Mr. DARLINGTON: I object as it does not appear what is on the table.

Mr. DARLINGTON: We desire to tender General Bussey in response to the subpoena duces tecum served on him.

Mr. MERILLAT: We asked General Bussey to produce his checks and check stub books.

Mr. CYRUS BUSSEY: I haven't a check or a check stub book that is more than one year old in my possession, I was in business for sixty years and do not remember ever having been called upon to produce a stub book or a check.

Mr. DANIEL WEEDON resumes the stand.

By Mr. MERILLAT:

Q. Are you familiar with the signature of Thomas G. Hensey? A. Yes.

Q. Please state whether or not this signature is his at the bottom of the paper I hand you? A. I think so, sir.

Q. Please state whether or not that is the signature of Thomas G. Hensey at the bottom of the paper I now hand you? A. Yes.

Mr. MERILLAT: We desire to offer the two papers the signatures to which have been identified, in evidence at this time together with the endorsements thereupon, the papers being note of April 29, 1896 for \$4,000 made by Thomas G. Hensey and Cyrus Bussey

Trustees and marked secured by deed of trust of lots 11, 110 12, and 13 block 12 Le Droit Park with certain interest payments noted thereupon and marked across its face paid April 17, 1900, and the other paper being note of similar date and likewise for \$4,000 with similar notations thereupon:

Mr. DARLINGTON: We object to these papers as having no relevancy to anything in this case, and as not proving themselves, and if they did prove themselves, as having been paid after the condemnation proceedings, and further that they are not evidence of any contribution of either of the Henseys or Mr. Hooker to this syndicate property.

The AUDITOR: The ruling is reserved and the papers will be filed.

Q. Are you familiar with the signature of Melville D. Hensey? A. I don't know as I am, I have seen it often, seen it in the office, but I don't know as I would recognize it.

Q. Have you seen him sign his name? A. Yes, on tickets and such things.

Q. How frequently have you seen him sign his name? A. Melville has not been in the office for four or five years. I don't know, might have been a hundred times or it might have been twenty-five

times, he would come into the office to get something and would sign a paper to leave, Mr. Hensey required some sort of the receipt for everything that left the office.

111 Q. I hand you a series of notes and ask you whether or not you are able to identify the signature of Melville D. Hensey? A. No, I cannot.

Mr. DARLINGTON: We admit that the signature to the notes are the genuine signatures of Melville D. Hensey to the five notes.

Mr. MERILLAT: I now offer in evidence five notes being two notes for \$1500 each dated October 2, 1891 made by Melville D. Hensey payable to Amzi L. Barber secured on lot 11, block 12 Le Droit Park and two notes dated October 2, 1891 for \$2,000 made by Melville D. Hensey to James McLane and marked secured on lots 11, 13 block 12 Le Droit Park and a note dated October 2, 1891 for \$2500 made by Melville D. Hensey to James McLane marked secured on lot 12 and 13 block 12 Le Droit Park, this last note being stamped paid October 7, 1893 we offer the notes together with the endorsements of interest thereon.

Mr. DARLINGTON: We object to these notes as being wholly incompetent to any of the issues in this case.

Mr. MERILLAT: We offer in evidence the receipt of the Columbia Title Insurance Company dated May 13, 1896 for \$41.

Mr. DARLINGTON: We have no doubt and are willing to concede for the purposes of this case that the paper produced, dated May 13, 1896 is a statement from the books of the Columbia Title Company of the manner in which it disbursed the new loan made in that year. We do not concede that any of the money passed in

112 the hands of General Bussey.

Mr. MERILLAT: We offer in evidence 17 tax bills being marked T. G. H. No. 9.

Mr. DARLINGTON: We object as not pertaining to the issues of this case and some of them not being in the name of Thomas G. Hensey or Cyrus Bussey.

Adjourned.

TUESDAY, February 18, 1909—10.30 a. m.

Hearing pursuant to notice.

Present: Messrs. Merillat, Richardson and Lyon.

This testimony is taken subject to the objection of Mr. Darlington.

WILLIAM E. EDMONSTON having been sworn testified as follows:

By Mr. MERILLAT:

Q. Please state Mr. Edmonston what if any office you hold in the Columbia Title Insurance Company and what office you held in that Company in the month of May 1896? A. I was president of the company in May 1896 and still am president.

Q. Please state whether or not that company made a loan on lots 11, 12 and 13 in block 12 Le Droit Park to Thomas G. Hensey and Cyrus Bussey trustees, or a loan was negotiated through that Company? A. The Title Company settled a loan made to Hen-

sey and Bussey trustees on the lots mentioned in May 113 1893.

Q. What do you mean by settled a loan? A. I mean that the money represented by the loan was sent to the Title Company to be by it disbursed, removing all incumbrances and paying the balance if any to the trustees named.

Q. Who sent the money to the Title Company? A. It was a loan made through Riggs Company.

Q. Have you the checks that were paid out by the Title Company in connection with that transaction and the papers? A. I have all except one, that was inadvertently left in the office.

Q. Please state whether this check No. 7064 is one of the checks that was paid out by you in connection with the settlement of the loan? A. That is.

Mr. MERILLAT: I offer in evidence check No. 7064, and ask leave to file a copy of the same. The purpose of offering this check is to show that Cyrus Bussey who was one of the trustees and to whose order the check was made payable endorsed it over to his co-trustee to take the entire personal charge of the trustees' check and put it to his own personal account.

Mr. LYON: I object as there is no proof of that fact here, and further that this hearing is a supplemental hearing for the purpose of giving counsel on the other side an opportunity of offering evi-

dence as to whether or not anything was paid into the Ten 114 Syndicate by the two Henseys and Hooker after January 19, 1893.

The AUDITOR: The objection is sustained.

Mr. MERILLAT: I desire that the copy of the check be filed and note an exception to the ruling of the Auditor.

MELVILLE D. HENSEY having been sworn testified as follows:

By Mr. MERILLAT:

Q. State whether or not you had an interest in what is known as the Ten Syndicate between the years 1893 and 1900, or in any of the intervening years.

Mr. LYON: I object for the reason that we are merely going over the same ground, it was shown whatever interest Mr. Hensey had at the original hearing.

A. At sometime in there, I did, but there are so many diverse interests in this matter that I am a little tangled.

Q. Have you any data from which you could refresh your memory about this matter? A. Yes, the evidence taken some four or five years ago in the case of Richardson vs. Hensey, I could look up the questions that were brought out at that time.

Q. Have you any other data? A. No.

Mr. LYON: I object to all leading questions.

Q. State whether or not you had a share in the Ten Syndicate in 1893 and 1894? A. I did, yes.

115 Q. In 1895 and 1896, do you know? A. I think so, but I won't be certain.

Q. In 1897, 1898 and 1899? A. The same answer, I don't remember exactly, can you give me the numbers of the lots?

Q. Lots 11, 12, 13 block 12? A. This history of the Bussey and Hensey Syndicate, I remember as this way—I think I had an interest right from the start along during those years subject to a loan made me by the Syndicate.

Q. It appears from the Syndicate records which are already in evidence that the loan was made in the year 1900, is that correct? A. Whatever the record shows is correct.

Q. State whether or not there were calls for assessments made from time to time on your interest in that syndicate between 1893 and 1900? A. I don't recall any assessment on account of the Bussey and Hensey Syndicate except the first original purchase money and the interest and taxes.

Q. I find that by agreement with Mr. McLane in October 1893 there was paid off a note of \$2500 representing a part of the purchase money mortgage on this property, please state how if you know the money was raised with which that loan was paid off.

Mr. LYON: I object to this general question.

Q. I find in the record this agreement, "September 27, 1893, agreement between James McLain as of first part and Bussey & 116 Hensey trustees of second part—Recites indebtedness on three notes, one for \$2,500 maturing October 2, 1893; one for \$2,000 maturing October 2, 1893; and one for \$2,000 maturing October 2, 1894, secured on lots 12, and 13 block 12 Le Droit Park. States whereas party of the second part desires to pay at maturity note of \$2,500 maturing October 2, 1893, with interest thereon as well as interest on the other two notes in full to date and wishes to extend the other note for one year and whereas party of the second part promises in consideration of the granting of the extension to pay the \$4,000 on October 2, 1894, with interest, now in consideration of the aforesaid promises by party of the second part the party of the first part grants extension of time for payment of the \$2,000 note for one year." Will you please state whether or not that refreshes your recollection as to whether or not anything was paid off by the Ten Syndicate at that time? A. After reading this agreement and this memorandum, I have no recollection whatever of making any payments other than the original amount subscribed as a cash payment on the purchase of these lots and the semi-annual interest and taxes.

Q. Did you pay your proportion of the semi-annual interest and taxes? A. Yes.

Q. From 1893 to 1900? A. As long as I held the share, and I think in the final settlement of this syndicate, there was some 117 matters charged to me that made it necessary for me to pay some money back to the syndicate, I have forgotten just what the condition of the statement was.

Q. How much did you pay back? A. I don't recall now.

Q. State whether or not calls were made for assessments where-

with to pay the obligations of semi-annual interest and taxes or other obligations during that time? A. I did pay the semi-annual interest and taxes.

Q. During the years 1893 to 1900, did you pay whatever was your proportionate part of any obligations that were paid off by the syndicate, do you remember?

Mr. LYON: I object as too general.

Q. I hand you a note made by you to the order of James McLain for \$2,500 payable one year after date with your endorsement on the back and which appears to have been paid October 7, 1893, being a note on this same property held by the Ten Syndicate, and state whether or not that note refreshes your recollection as to any payment having been made wherewith to discharge that note by yourself or other members of the Ten Syndicate to your knowledge. A. The name on the back of the note is not my endorsement but a memorandum of the bank clerk.

Q. Please state whether or not that note which the stamp shows was paid October 1893 refreshes your recollection as to whether or not you made any payment, or an assessment was made on you for your proportionate part of that note? A. I don't recall any assessment on account of this note.

118 Q. Who was the manager or who handled the affairs of the Ten Syndicate at that time?

Mr. LYON: I object.

The AUDITOR: The objection is sustained.

Q. Have you any knowledge as to who made the payments on account of the indebtedness of the Ten Syndicate during the years 1893 and 1900?

Mr. LYON: I object.

The AUDITOR: The objection is sustained.

Mr. MERILLAT: I note an exception and I desire to have it noted that we expected to show by this witness that Thomas G. Hensey was the person who paid the indebtedness of the Ten Syndicate during the years now in issue.

The AUDITOR: You may ask the witness the direct question set forth in your statement just made.

Q. Did Thomas G. Hensey pay the indebtedness of the Ten Syndicate or part thereof during the years 1893 and 1900 or in any of the said years, to your knowledge? A. Do you mean did he pay them for me?

Q. Did he pay them?

The AUDITOR: Of your own personal knowledge?

A. On principal, interest or what?

Q. Anything. A. He regularly paid the interest on that trust what was on the property and the taxes as far as I know. In some instances I saw some of the tax receipts, I don't remember about 119 the interest receipts. The reason I saw the tax receipts was that sometimes I went to the tax office in regard to a number of tax bills and they were among them.

Q. Do you know of your own personal knowledge in what manner or how Thomas G. Hensey secured the funds wherewith to pay the indebtedness of the Ten Syndicate which he paid?

Mr. LYON: I object.

A. By calling on the different members for the money that was due from them.

Q. Is that statement applicable to any other indebtedness of the Ten Syndicate which were paid off between the years 1893 and 1900 other than interest and taxes? A. It is not, I have no knowledge of any other assessment.

Q. Have you any knowledge of any other indebtedness of the Ten Syndicate which was paid off between 1893 and 1900 than the indebtedness on account of interest and taxes? A. I have not.

Q. Please examine the paper which I now hand you and state if you know in whose hand writing it is? A. I should say in the hand writing of Thomas G. Hensey.

Mr. MERILLAT: I desire to offer this paper in evidence and ask that it be marked M. D. H. No. 1.

120 Q. I hand you herewith a paper and ask you to state whether or not you have any recollection of seeing that paper or a copy thereof at any time, and if so, when?

Mr. MERILLAT: I desire to state that the papers I now offer in evidence marked M. D. H. No. 1 are papers found among the effects of Thomas G. Hensey produced by the administrator under the call that appear in the record.

A. I don't recall the paper. I may have seen it but there is nothing in it that definitely calls it to my memory.

Q. Is that your best recollection and belief. A. Yes, I have read it over carefully for the purpose of trying to remember it.

Q. Please state in whose hand writing the paper is which I now hand you? A. I think it is in Thomas G. Hensey's hand writing.

Mr. MERILLAT: I desire to offer the papers in evidence and ask that they be marked M. D. H. No. 2.

Mr. LYON: I object as incompetent.

The AUDITOR: The papers will be filed.

Mr. MERILLAT: Counsel note that they desire to except to any decision against them, if any, with reference to any papers offered in evidence or wherever a ruling has been reserved.

Q. Please state if you know whether or not Thomas G. Hensey during or prior to 1900 rendered statements to the members of the Ten Syndicate of the financial accounts and affairs of that Company?

Mr. LYON: I object.

The AUDITOR: The objection is sustained.

121 Mr. MERILLAT: I note an exception.

Q. Please state what if any services you rendered to the Ten Syndicate after the date of its formation?

Mr. MERILLAT: I object as immaterial.

The AUDITOR: The objection is sustained.

Q. Did you keep the accounts of the Ten Syndicate for any period after its organization? A. I think not.

Q. State what if anything you had to do with the agreement whereby James McLain extended the time of payment of two notes in consideration of the payment off in 1893 of one note for \$2,500. on the property of the Ten Syndicate?

Mr. LYON: I object as immaterial to the issues in this cause.

The AUDITOR: The objection is sustained.

Mr. MERILLAT: I note an exception.

Mr. MERILLAT: We believe that with the return of the depositions to be sent out that our case is closed.

Adjourned.

WEDNESDAY, April 8, 1908—3 p. m.

Hearing pursuant to notice.

Present Messrs. Richardson, Lyon and Darlington.

PERCY E. BUDLONG having been sworn testified as follows:

122 By Mr. RICHARDSON:

Q. Will you state whether you took any of the evidence in the case of Richardson vs. Hensey Equity No. 24084 as an examiner? A. I did, one session in this volume No. 3.

Q. At whose instance did you take that? A. Mr. Lynham, the examiner.

Q. You may state when the matter was placed in your charge to take the evidence whether or not you got anybody else to take the evidence or some of the evidence? A. I do not know that it was formally placed in my charge, but while I had it no one else took any of it except myself and Mr. Hanna.

Q. State whether or not you had anybody else to take any part of that testimony. A. No, we employed no one to do the work.

Q. My question was whether your firm did the work or someone else? A. Mr. Lynham may have employed someone else, I am speaking for myself I did not employ any one to do it.

Q. Please look at pages 747 to 753 of the record before you? A. Yes, I have examined them.

Q. State whether or not you took any of that evidence. A. I did not and I would like to state that the reason is, I have a distinct recollection of taking one session of testimony in this case and I have found the session that I took begins at page 362.

123 Q. What is the date that you took? A. April 14, 1904.

Mr. DARLINGTON: I would like to note the we object to the cost of this being charged to us.

THURSDAY, April 9, 1908—10 a. m.

Hearing pursuant to adjournment.

Present: Messrs Lyon, Richardson, Merillat and Darlington.

Mr. J. A. LYNHAM is recalled.

By Mr. MERILLAT:

Q. Please give your name, age and state whether or not you were in 1904 an examiner in chancery of the Supreme Court of the District of Columbia. A. My name is J. A. Lynham, my age is 37 years, and I was an examiner in chancery at the time you mention.

Q. Please state whether or not as such Examiner you took the testimony of Thomas G. Hensey in Equity Cause No. 24084 Richardson vs. Hensey, or part of the same?

Mr. LYON: I object so far as this particular matter is concerned for the reason that this testimony was taken prior to our being made parties to this and cannot be binding upon us.

A. I took certain portions of the testimony of Mr. Thomas G. Hensey.

Q. State whether or not you can of your personal knowledge state what Mr. Hensey testified to at that examination which you 124 took? A. No, sir, I could not begin to do it.

Q. State whether or not you have searched for your original notes of the testimony taken by you. A. Yes, I have.

Q. Have you been able to find them? A. I have made a diligent search for the testimony but have been unable to find it. I have a distinct recollection of having destroyed the testimony referred to in connection with certain other testimony taken by me.

Q. State whether or not you took down accurately and correctly the deposition of Mr. Hensey given at that time? A. The testimony taken by me was of course taken as correctly and as accurately as it was possible to take the testimony, it was given slowly and deliberately and I was not conscious of having left out one word uttered by the parties or the witness.

Q. State whether or not prior to the destruction of your notes your notes were transcribed accurately and reduced to typewriting? A. They were. My recollection is Mr. Hensey read over the testimony, while there was a stipulation of counsel in the case that the signatures of the witnesses should be waived.

Mr. LYON: I object.

A. And notwithstanding that fact Mr. Hensey came to my office in the Columbian Building and read over at great length and in detail the testimony I had taken of himself in his case. There 125 was never any objection made to it or criticism of it by Mr. Thomas G. Hensey that I have any recollection of.

Q. Please state whether or not your statement just made with reference to Mr. Hensey's examination of the deposition applies to all of his deposition reduced to typewriting filed in the case including not only the part you took but any parts by any other examiner, to

the best of your recollection. A. My very strong recollection is that Mr. Hensey read over his testimony in toto. That is to say read over his entire testimony given in this case before the same was filed by me in the Clerk's office. He was at my office on several occasions and read over his said testimony and my understanding was that he read over his testimony in full.

Q. Please state Mr. Ly-han, examining the session of testimony of April 25, 1904 page 728 and through that session and state whether or not you took the testimony on that date? A. My answer is that I took the testimony referred —.

Q. Refreshing your recollection by the testimony which you took, please state whether you are able so refreshing your recollection to testify from your independent recollection what Mr. Hensey said at that session of testimony, I wish you would look over the testimony and then state whether or not from your independent recollection you are able to state what it testified to ? A. I am absolutely not able to do so.

126 Q. Please state whether or not the session of testimony in question being the one immediately referred to of April 25th, was correctly transcribed by you from the original notes and whether or not said notes were among those destroyed? A. The testimony was correctly transcribed from my original notes, which said notes were among those destroyed as I have formerly stated.

Mr. MERILLAT: We now desire to offer in evidence from the testimony taken April 25, 1904, and filed in the Clerk's Office in Equity Cause No. 24,084, pages 747 to 753 both inclusive, being the entire testimony of that date which relates to the interest of Thomas G. Hensey in the Ten Syndicate and the payments made on account of said interest.

Mr. LYON: I make the same objection as made originally.

Mr. WHITE: I object as not properly proved. I also object to the testimony in regard to any stipulation which may have been entered into in this cause as this witness' testimony is not the best evidence.

Mr. LYON: So far as I know we have no further proof to offer, but I should like to consult with Mr. Darlington before making that definite.

Adjourned.

127

Bill.

Filed July 18, 1903.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24084, Doc. 54.

CHARLES W. RICHARDSON, JOSEPH W. LITTLE, MARY B. CUMMINGS, W. A. Bevard, F. H. Chittenden, Frances E. Grice, B. Richards, Geo. C. Esher, Mary A. Heinz, Alice Titcomb, William B. Brittain, Pauline Heinz, James T. Brown, Gertrude L. Chittenden, Etta Beatty, Bernard E. Fernow, Joseph W. Noble, Elizabeth Olmstead, Leah Tallmadge, Complainants,

vs.

THOMAS G. HENSEY, MELLEN C. HOOKER, MELVILLE D. HENSEY, Defendants.

Your complainants respectfully state as follows:

1. That they are citizens of the United States and residents of the District of Columbia, and bring this action in behalf of themselves and all the other members of the syndicate herein referred to similarly situated as beneficiaries under the syndicate agreement and deed of trust hereafter described and set out, the other parties to said syndicate agreement and deed of trust too numerous to mention and many of them being widely scattered outside of the jurisdiction of this Court, so that it would be impracticable and would cause vexations, delays and injustice to join all persons as parties, complainant or defendant who like complainant are beneficiaries under the syndicate agreement and deed in trust hereinafter mentioned and whose interests are identical with those of your complainants.

2. That the defendants are citizens of the United States and residents of the District of Columbia, and that the defendants Thomas G. Hensey and Mellen C. Hooker are sued in their own right and as trustees under the hereinafter described deed in trust; that Melville D. Hensey is sued in his own right and as agent of the 128 trustees aforesaid and of your complainants and as a beneficiary under the hereinafter described deed in trust and syndicate agreement.

3. That prior to the 14th day of January, A. D., 1903, the defendants Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, each in what he did acting in conjunction with and for and on behalf of the other two defendants, solicited or induced your complainants and the other members of the syndicate hereinafter mentioned to join them, the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, in a syndicate for the purchase of the Dean tract of land in Block 12, of Le Droit Park. They stated to your complainants that they had an opportunity to purchase the aforesaid land at a cheap price that would certainly net a profit in a very short time, but that they, themselves, had

not sufficient money available with which to purchase the aforesaid tract of land which would cost \$150,000 from its then owner, (naming as complainants are informed and believe to some of the prospective shareholders Mrs. Amanda Dean, as the owner) and they said that for this reason they desired to form a syndicate and to interest your complainants and others in its purchase on equal terms with themselves, the organizers of the syndicate, stating that they, the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey each would take shares in the proposed syndicate and said property when acquired would be taken and held in the names of said Thomas G. Hensey and Mellen C. Hooker, in trust for the use of the persons who furnished the purchase money of said real estate, and that the trustees would handle and dispose of the land as trustees for all the shareholders in the syndicate to the best interest of all concerned and that the proceeds derived from sales of the land to be acquired would be divided among the persons interested therein proportionately to the investments in the syndicate. That said defendants Hensey, Hooker and Hensey represented to your complainants and they so understood that the cost of the land from the owner, Mrs. Amanda Dean, and the lowest price that the same could be purchased for was \$150,000 of which \$50,000 would have to be paid in cash and the balance in notes. That the syndicate would be organized on a basis of \$150,000 divided into 100 shares of \$1,500 each, representing the lowest price for which the land could be obtained as your complainants were led to believe by said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey; that they treated the defendants as their agents in the purchase of the property; that such relation as principal and agent was understood to exist, and your complainants aver and charge did exist between your complainants and the organizers of the syndicate to whom the complainants turned over their moneys; that complainants then having faith and confidence in the defendants as their agents and trustees did not investigate their statements but entered into the syndicate in the belief that the representations made them were true and did not discover to the contrary until recently. That defendants represented that the price named was a low one, that the land would rapidly increase in value by reason of certain events which would occur in a short time; that it never would be necessary to make further payments on account of said purchase; that as soon as sufficient 129 number of shares were agreed to be taken to assure formation of the syndicate and a first payment of \$500 per share was made by each of the subscribers to the syndicate, they, the aforesaid Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, which last named person your complainants were led and induced to believe was an agent for the proposed trustees and for the shareholders and who disclosed himself as "accountant for trustees" in the declaration of trust hereinafter referred to would purchase the land from its owner and thereafter would assign shares to each subscriber to the syndicate in proportion to his shareholdings; that it was stated by the defendants aforesaid to your complainants and others who be-

came subscribers to the syndicate that by said subscription they would get in on the "ground floor" that is to say would acquire the aforesaid Dean tract which they, the syndicate organizers, had an opportunity of purchasing at the first cost price and would share equally with the managers of the syndicate in the profits that all would realize from the deal, into which, as stated, it was represented and your complainants were induced to believe all would go on equal terms. That your complainants have learned only recently that said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey studiously concealed from your complainants that they or any one of them had purchased or intended to purchase the aforesaid land, or had an option thereon or had the refusal of the same at a price much less than the total price named to your complainants and that there was any purpose on his or their part to purchase the land from its owner, Mrs. Amanda Dean, for his or their individual benefit. Your complainants on the contrary had it represented to them, and they understood and believed that they would acquire said land at the lowest price which the owner aforesaid would accept for the same, that is, for the price of \$150,000. That your complainants would not have invested their money in said syndicate had they known, as they have learned only recently, the real facts, that the price had been misrepresented and that they were paying many thousand dollars more than Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey or either of them had paid or were to pay for the said land to its owner, Mrs. Amanda Dean. But, that relying upon the representations of said defendants, Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey that the land was being bought from the owner for \$150,000 and was a low price, and at that time having faith and confidence in the integrity, honesty and fair dealing and knowledge of real estate values of the defendants, Hensey, Hensey and Hooker, your complainants agreed to become and on perfection of the organization of the syndicate did become members of the trust estate or syndicate they the aforesaid defendants were organizing and did organize your complainants each bound himself to take certain numbers of shares and to pay the price agreed on for each share in and as the same should be demanded of him. That your complainants have since and very

recently learned that the statements made to them by the defendants aforesaid, Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, as to the price of the land aforesaid from the owner, namely, \$150,000 were false and that your complainants by means detailed at length hereafter had been defrauded out of the difference between this price and the price actually paid the owner, Mrs. Dean, namely, between \$112,000 and \$120,000, besides out of certain moneys in connection with erection of buildings, on the said land referred to hereinafter.

4. That thereafter your complainants some time in the early part of January, 1893, to the best of your complainants' knowledge, recollection and belief, received information from the defendants, the aforesaid Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, that they had succeeded in getting a sufficient number of

subscribers to form said syndicate and that your complainants by the terms of their agreement should deposit with them, the said defendants, the amounts your complainants had agreed to contribute as a first payment in and for the purchase of the land to be bought, that is to say, \$500 for each and every share subscribed. That your complainants thereupon gave to the defendants moneys to the amount they severally had agreed to pay in on account of their shares, that is, \$500 for each and every share your complainants subscribed for. Some of your complainants made their payments to the aforesaid defendants prior to the 14th day of January, 1903. Your complainants are informed and believe and therefore aver that the books of the syndicate show that the entire one hundred shares into which the syndicate capitalization was divided was subscribed for and taken and the \$50,000 represented as necessary to be paid as a first payment for and on account of the purchase of the tract of land to be bought by the syndicate was actually paid in, though Melville Hensey, Thomas G. Hensey and Mellen C. Hooker, to the syndicate trustees on January 14, 1893, the date when, as the records of the District of Columbia show, there was executed a deed conveying the Dean tract of land therein referred to to Melville D. Hensey.

5. That thereafter, on the 16th day of January, 1893, there was executed by and between each of your complainants and the other shareholders in said syndicate and the trustees a written agreement styled a "Declaration of Trust" setting out the terms and conditions on which the several parties to the syndicate held their interests in said syndicate. A true copy of said "Declaration of Trust" is attached hereto marked Exhibit — and is prayed to be read as a part hereof, the same being identical with those held by all the shareholders save as to names of beneficiaries and number of each certificate. By said "Declaration of Trust" it was declared that Thomas G. Hensey and Mellen C. Hooker, trustees, with power to sell or mortgage, hold in trust under a certain deed from Melville D. Hensey dated January 16, 1893, lots 14, 15 and 16 in block 12 of A. L. Barber and Company's subdivision of Le Droit Park and also lots 19, 20, 21, 22, 23, and 24 in Amanda M. Dean's subdivision of lots in block 12 of Le Droit Park subject to certain trusts to secure payment of \$100,000 on said land and that

131 said Thomas G. Hensey and Mellen C. Hooker were trustees for an undivided one-one-hundredth interest held as tenants in common by each owner of one share in the "Declaration of Trust," but subject to payments of assessments on each shareholder as they might be called on to pay assessments. And your complainants aver that they have paid all lawful assessments in and as the same have become due and payable under the terms of said declaration of trust and were and still are members of said syndicate with all the rights thereunto appertaining.

6. That, as stated in the "Declaration of Trust" hereinbefore referred to, the title to the land owned by said syndicate was conveyed to Thomas G. Hensey and Mellen C. Hooker under a certain deed in trust from Melville D. Hensey, which said deed in trust is attached hereto marked A-2 and is prayed to be read as a part hereof.

That in and by said deed in trust there is conveyed by Melville D. Hensey for the sum of \$100 to Thomas G. Hensey and Mellen C. Hooker as trustees the land purchased for the aforementioned syndicate, the same being situated in the County of Washington, District of Columbia, described as follows:

All of lots Fourteen (14), Fifteen (15) and Sixteen (16), in Block numbered Twelve (12), in A. L. Barber and Company's subdivision of certain tracts of land, now known as "Le Droit Park," as per plat recorded in Liber Governor Shepherd, folio 15, of the records of the office of the Surveyor of the District of Columbia. Also all of lots numbered Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23) and Twenty-four (24), in Amanda M. Dean's subdivision of lots in said Block Twelve (12) "Le Droit Park" as per plat recorded in Liber County No. 8, folio 35, of the records aforesaid, and the same being conveyed to said Thomas G. Hensey and Mellen C. Hooker as trustees subject to payment of two certain deeds of trust aggregating \$100,000 with "full power to sell, mortgage, lease or otherwise dispose of the same or any part thereof." That all of said deeds, including the aforesaid deed in trust and a deed in fee from Amanda M. Dean to Melville D. Hensey, which is attached hereto marked Exhibit A-3 and prayed to be read as a part hereof — at on- and the same time, on January 19, 1893, in the office of the Recorder of Deeds for the District of Columbia and your complainants then and from that time until very recently had supposed that Melville D. Hensey in all transactions *to* formation of the syndicate and in executing both said deeds was acting as agent for the trustees and for all the syndicate shareholders.

7. Your complainants are informed and believe and therefore aver and charge that by the misrepresentations, concealments — artifices aforesaid a fraud was perpetrated on your complainants and by such fraud they were induced by defendants to advance to defendants, their agents, the moneys of your complainants for the purchase of the aforesaid land, which aforesaid land thereupon was turned over to your complainants at an advanced price and at a large wrongful profit, namely, the difference between \$112,000 or \$120,000, the price for which Melville D. Hensey acquired title to the aforesaid land from its owner, Mrs. Amanda Dean, and

132 \$150,000, to the organizers of the syndicate and trustees for your complainants.

That the means whereby said fraud was perpetrated and consummated was as follows: Thomas G. Hensey and Company, is a firm of real estate brokers in this city, of which said firm Thomas G. Hensey was and is the senior partner and of which said firm as your complainants are informed and believe Melville D. Hensey, then a young man 23 or 24 years of age and without independent means so far as your complainants have been able to learn, was an employee or clerk, and in which firm your complainants are informed and believe and therefore aver said Melville D. Hensey became a partner. Mellen C. Hooker is a real estate broker in the city of Washington. Some time in 1892 as your complainants are informed and believe and therefore aver the persons above named

learned the price at which the land hereinbefore mentioned could be purchased, namely, the price at which Melville D. Hensey did subsequently acquire title to the aforesaid land, between \$112,000 and \$120,000. They thereupon undertook to form a syndicate for its purchase and the three defendants named, the Messrs. Henseys and Hooker, proceeded in divers ways to interest their friends and acquaintances and persons who had confidence in them in its purchase, soliciting them to become members of the syndicate they proposed to form, stating to them that they, meaning the organizers of the syndicate, could buy the land from its owner for \$150,000, that they would act for and in behalf of those who aided them to effect the purchase, that the land was cheap at this price, that they themselves would take a certain number of shares in the syndicate, and would take the other subscribers to the syndicate in on the same terms with themselves, and would manage the property for the best interests of all persons interested in the syndicate as their trustees. Melville D. Hensey in all these transactions acted as a person interested in the formation of said syndicate and as one of the agents in the organization of the syndicate and as agent for all parties concerned, and was treated as their agent by persons whom he interested in the syndicate, and in the syndicate agreement was designated "Accountant for Trustees."

All during the negotiations for and the actual organization of the syndicate, and since its organization, until your complainants recently discovered to the contrary, there was carefully and studiously concealed from your complainants the fact that Melville D. Hensey or the trustees had or would have any interests adverse to your complainants, that the real price to be paid the owner for the land was, as your complainants are informed and believe and therefore aver \$120,000 or less, and that by means of interesting your complainants in the syndicate the defendants' trustees and organizers of the syndicate would make a large profit out of your complainants and either would obtain interests in said syndicate for nothing or would obtain for no consideration and by duping your complainants moneys from them wherewith and whereby to acquire interests in the

133 syndicate. Your complainants have made repeated efforts to learn from Messrs. Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, the defendants, and from Joseph Paul, the agent of Mrs. Amanda Dean, the price paid the said Mrs. Dean, for the land aforesaid, but they have neglected and the two first named at a meeting of all local shareholders refused, to give your complainants any information on the subject though admitting a lesser price than \$150,000 was paid Mrs. Dean and it was only by chance complainants were able to learn what they believe was approximately the price paid. Having succeeded in effecting organization of the syndicate and having the moneys of your complainants in hand, the defendants, organizers of the syndicate, purchased said land, title being taken in the name of Melville D. Hensey and two days later by collusion among the defendants Mrssrs. Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, conveyed said land at the advanced price of \$150,000 to Thomas G. Hensey and Mellen C.

Hooker as trustees for your complainants and the syndicate. Your complainants charge that in this transaction Melville D. Hensey was merely the agent or tool of the trustees Messrs. Thomas G. Hensey and Mellen C. Hooker. Your complainants on information and belief aver that by the aforesaid misrepresentation, fraud and artifice a large profit was unlawfully made by the defendant organizers of the syndicate, and trustees for the syndicate out of the other members of the syndicate, that the moneys subscribed by the syndicate shareholders, other than Thomas G. Hensey, Melville D. Hensey, and Mellen C. Hooker, was the means directly or indirectly wherewith the said land was bought, that the shares of Thomas G. Hensey and Mellen C. Hooker in said syndicate do not represent value of money actually contributed to said syndicate or any consideration whatever but directly or indirectly represent part of the illegal profit they made out of said syndicate shareholders by the aforesaid misrepresentations, fraud and artifices, that in all that they did during, at the time of and since organization of the syndicate Messrs. Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker were, as your complainants are advised and believe, and therefore aver, trustees for your complainants and should be so declared by the court and decreed to hold the shares standing in their name as trustees for your complainants and to reimburse them for any losses your complainants may be found to have illegally suffered. Your complainants on information and belief aver that Thomas G. Hensey has eight shares in said syndicate that two shares have been given by him to a relative; that Mellen C. Hooker has fourteen shares in said syndicate, all intact and that Melville D. Hensey has one share in said syndicate and possibly interests in other shares.

8. That said Thomas G. Hensey and Mellen C. Hooker, trustees under said deed in trust hereinbefore referred to on or about the nineteenth day of January, A. D. 1894, subdivided part of lots numbered nineteen (19), Twenty (20), and Twenty-four (24) and all of lots numbered Twenty-one (21), Twenty-two (22) and Twenty-three (23) of Amanda M. Dean's subdivision, in said Block Twelve (12), above set forth, into lots numbered Twenty-five (25) to Forty-five (45) inclusive, as per plat recorded in Liber County No. 9, folio 86, of the records of the office of the Surveyor for the District of Columbia. That on or about the first day of March, A. D. 1899, said Hensey and Hooker, trustees as aforesaid, resubdivided said lots twenty-five (25) to Forty-five (45) inclusive, in said Block Twelve (12), into lots numbered Forty-six (46) to Sixty-five (65) inclusive, as per plat recorded in Liber County No. 12, folio 33, of the records aforesaid; the same being known as Thomas G. Hensey and Mellen C. Hooker, Trustees, subdivision of lots in said Block Twelve (12).

9. That thereafter certain condemnation proceedings were instituted on behalf of the District of Columbia for the extension of Rhode Island Avenue, through "Le Droit Park" and part of said lot numbered Twenty-four (24) of Amanda M. Dean's subdivision of lots in said Block Twelve (12) was condemned and approximately 20,759.90 feet of ground in said lot was appropriated to the use of

said vaenue, the District allowing compensation therefor in about the sum of \$20,760, as per plat recorded in Condemnation Liber No. 15, folio 5, of the records of the Surveyor's Office aforesaid. That under said condemnation proceedings certain benefits were assessed against said land aggregating as your complainants are informed and believe between ten and eleven thousand dollars.

10. That said syndicate by the terms of the aforesaid deed in trust and syndicate declaration obtained the land in fee simple subject to certain trusts or mortgages aggregating \$100,000, a part of which since then has been paid off, each shareholder becoming a tenant in common of the said land to an extent or degree proportionate to his contribution to the total syndicate's price, that is to say your complainant Charles W. Richardson having a five-one-hundredths therein by reason of payments of over \$1,400 per share on five shares, your complainant Joseph W. Little a three-and-a-half-one-hundredth interest therein by reason of similar payments; your complainant Mary B. Cummings a one-hundredth interest therein by reason of similar payments; your complainant B. Richards a one-one-hundredth interest therein by reason of similar payments; your complainant Mary A. Heinz a three-one-hundredths interest therein by reason of similar payments; your complainant George E. Esher a two-one-hundredths interest therein by reason of similar payments; your complainant Francis E. Grice a one-one-hundredth interest therein by reason of similar payments; your complainant F. H. Chittenden a one-one-hundredth interest therein by reason of similar payments therein by himself and C. L. Marlatt, your complainant Chittenden being an assignee of one-half of a one-one-hundredth interest from said Marlatt; your complainant W. A. Bevard a one-half of one-one-hundredth interest therein by reason of similar payments; your complainant Alice Titcomb a two-one-hundredths interest therein by reason of similar payments; your complainant William B. Brittain a one-one-hundredth interest therein by reason of similar payments; your complainant Pauline Heinz a two-one-hundredths interest therein by reason of similar payments; your complainant Bernard E. Fernow a five-one-hundredths interest therein by reason of similar payments; your complainant James T. Brown a one-and-one-half-hundredths interest therein by reason of similar payments; your complainant Etta Beatty a one-one-hundredth interest therein by reason of similar payments; your complainant Gertrude L. Chittenden a one-one-hundredth interest therein by reason of similar payments; the title to said land, however, being vested in the organizers of the syndicate, Messrs. Thomas G. Hensey and Mellen C. Hooker in and upon certain trusts and powers, namely, as trustees for your complainants with "power to sell, mortgage, lease or otherwise dispose of" the said land, but with no power to use or exploit the land for any other purpose and with no power to bind the land or your complainant's interest therein in any other manner or for any other purposes than those stated in the grant of the specific powers enumerated. That in certain ways and by certain means, including exchanges of the houses hereinafter mentioned, for shares of stock there have been turned in to

the syndicate some eleven shares of stock, making 89 shares instead of 100 among which the assets of the syndicate now should be divided.

11. That after said syndicate had been in operation some years the trustees without authority in and under the deed in trust by which they held title to the land aforesaid, without permission or authority from a larger number of the shareholders in said syndicate, without the knowledge of some of them and against the protests of other shareholders proceeded upon a large, extensive, costly and extravagant project of improvement of a large part of the said land by the erection of buildings thereon. That to carry on this building project the trustees in the claimed exercise of their powers and notwithstanding the purpose of the loan was in violation of their trust proceeded to encumber the land with a large and heavy building loan, namely, a loan of \$60,000 and then proceeded to erect a class of buildings on part of said land that were extravagantly designed and far more costly than the locality justified. Furthermore, in the construction of said houses extravagance and waste was shown and due and proper business care and judgment was not exercised. That the first a number of your complainants knew of the erection of the houses was when they saw in the newspapers that their erection had begun and others of your complainants were in no position to begin costly litigation and were informed by the trustees aforesaid that the trustees had power under the agreement to act as they deemed best. That your complainants since have learned that Thomas G. Hensey was largely interested in vacant lands in the immediate neighborhood of the syndicate property as the records of the District will show and complainants believe and therefore aver that one reason why said improvements were projected was, at your complainants' expense, to enhance the value of other vacant land in which said Hensey was interested. That the trustees began the building of 20 houses costing more than \$5,200 each to build though the original plan was to limit the cost to \$3,000 each as represented to some shareholders by letters. That they employed as

136 architect the Melville D. Hensey defendant herein, a young man and so far as complainants are informed without sufficient experience or skill, and let the building of them to an irresponsible party, one A. N. Kellogg, who was mixed up with said Melville D. Hensey in a number of schemes and projects and before the buildings mentioned herein were finished defaulted and fled the city. That no bond, or if so no adequate and sufficient bond, as it is customary and as it was the duty of the trustees to do, was taken from said Kellogg by the trustees for the construction of said buildings. If any bond was taken, no suit on the same ever has been entered as was the duty of said trustees and the trustees though requested to furnish and given ample time to furnish said bond to your complainants have neglected so to do. That after the default of said Kellogg the said dwellings were completed at the expense of your complainants and other members of the syndicate. The defendant Mellen C. Hooker claims to have supervised completion of said buildings and as your complainants are informed and believe charged and was paid large commissions, namely, a commission of

6% for his services though the same was in violation of his trust as complainants are advised. Your complainants have been informed and believe that large commissions also have been paid said Melville D. Hensey and said Thomas G. Hensey for alleged services in connection with the property of the syndicate, but no detailed, adequate statement of account ever has been rendered your complainants by said trustees, showing just what moneys were paid out, to whom and on what account though your complainants have requested such detailed explanations. That your complainants' attorney, Charles H. Merillat, at a meeting with the trustees requested to see the construction account, and the book showing the items of cost of the buildings erected, but though the dwellings were built three years ago, the book was not produced and he was informed by the trustees that the building or construction book had not been posted up and that it would not be intelligible to any one but the trustees, that they had approximated the cost from what data they had, vouchers, etc., but that if given until the next semi-annual meeting (about next December) the trustees would fix up a detailed statement and when he then demanded to see the letters sent and received and records of the meeting when it was alleged authority was given to build he was met with evasive replies, the statement that it was Summertime and that it would take some considerable time to hunt them up and produce them. That the aforesaid buildings have been for sale for some months at Seven thousand dollars each, which price the aforesaid Thomas G. Hensey has admitted would represent no more than the alleged cost price of the buildings and ground to the shareholders and no profit or interest on their money, but the extravagance and waste in the construction of the buildings was such that none of them have been sold as your complainants are informed and believe for as much as the alleged cost price "seven thousand dollars) notwithstanding improved realty now by reason of the largely advanced cost of building material and labor is at least 25 per cent higher than when said houses were built. That your complainants are informed and be-

137 lieve that some of the houses have been traded and exchanged and perhaps have been figured in such deals at seven thousand dollars but the same was a fictitious and not a cash price and some of the houses so exchanged have been sold by the persons taking them for six thousand dollars. That notwithstanding the houses are not over three years old your complainants are informed repairs have had to be made on them. That the houses not sold rent for only \$35.50 per month, and as complainants believe not over three per cent. per annum of the mobey invested in them after taxes, commissions, repairs and other expenses are provided for, whereas the loan with the proceeds of which they were built bears interest at six per cent. per annum so that the houses have been a drain on the syndicate and recently assessments have had to be paid to meet the interest charges, expenses and commissions laid against the same by the defendant trustees.

12. That since the purchase of the land aforesaid in behalf of the syndicate there has been received some twenty thousand dollars or more from the District of Columbia for condemnation for

street purposes of part of the land of said syndicate and assessments for benefit to the amount of between Ten and Eleven thousand dollars have been laid against the same. That your complainants believe a part of the money received on account of the condemnation proceedings has been applied in reduction of the loan on the property at the insistence of the holders of the mortgages or deeds of trust and against the writ of complainants' trustees who wanted to use it to erect more costly and extravagant buildings. That complainants are informed and believe the assessments for benefit laid against your complainants' property have not been paid and still remain a charge against same. That of the twenty houses erected by the defendant trustees some eleven now remain in the hands of the trustees as property belonging to your complainants and the other members of the syndicate and the other nine have been disposed of by way of trade or other process to other parties but the details of these transactions are unknown to your complainants, because though requested to furnish detailed information concerning the same the trustees never have made or given either a detailed, a satisfactory, or an intelligible account of their transactions for their *cestuis que trust* but have confined all their statements to their *cestuis que trust* to brief reports from which it is impossible to tell in detail what charges have been made and what transactions have occurred. That your complainants are informed and believe that there still remain many thousand dollars indebtedness against the property, of which all or a large part is overdue and unpaid and your complainants fear that unless speedy steps be taken by the Court to protect their interests that said interests will suffer a further depreciation and that they will be subjected to further heavy losses and that the property will be manipulated still more to the personal enrichment of the trustees and those connected with them.

13. That said Thomas G. Hensey and Mellen C. Hooker never have rendered full, correct, plain and detailed statements of accounts to your complainants and the syndicate shareholders although requested so to do. That the accounts as your complainants believe

138 are not so kept that the items of expenditures can be readily and properly sifted, classified, verified and analyzed and their propriety, necessity and legality determined except by the aid of a skilled accountant; that said Thomas G. Hensey, the managing one of the trustees, refused to give a list of shareholders to one of your complainants and only with great reluctance and after refusals and on threats of litigation gave such a list to another of your complainants; that shareholders when they came for information met rebuffs and refusal or evasions; that he neglected or refused to give explanations to shareholders, his *cestuis que trust*, of the administration of said trust until one of them threatened litigation and the appointment of a receiver, and had called on his co-shareholders to join him in legal proceedings; that even then said Thomas G. Hensey and Mellen C. Hooker at a meeting of shareholders refused to give any information whatsoever as to the price paid Mrs. Amanda Dean for the land, the length of time any other person held the land or any interest therein after Mrs. Amanda

Dean had parted with her interest prior to its being turned over to the shareholders, and whether or not the organization of the syndicate had been initiated prior to the acquisition of any interest whatsoever in said land on the part of Melville Hensey or the trustees Thomas G. Hensey and Mellen C. Hooker or any one acting for them or either of them and likewise whether money had been received from the shareholders prior to Melville Hensey taking title to the land; that subsequent to the aforesaid shareholders' meeting, your complainant Charles W. Richardson demanded to see the books of the syndicate with his attorney and was informed that the trustees would consult their attorney first; that subsequently a meeting was arranged between the trustees and their attorney and complainant Charles W. Richardson, and his attorney, Charles H. Merillat, that after first declining, the trustees on advice of their counsel, permitted complainants' attorney to copy from the book of original shareholders *and* list of shareholders and dates of their first payments for shares; that said books is not accurate in that whereas it represents that said Charles W. Richardson and the other shareholders all made their first payments on January 14, 1893, the fact is that said Charles W. Richardson made his first payment of \$2,500 on January 12, 1893, as his check book shows and others of complainants, it is believed, likewise made their payments prior to the date named, though it does show that on the day Melville D. Hensey took title there had been paid in the full sum of \$50,000 to be paid by the syndicate for the land; that when complainants' attorney demanded to see the construction or building book he met evasive replies and the statement that it was not posted and was not in a condition where it would be intelligible to any one but if complainants gave the trustees until the next semi-annual period, some months hence, the building accounts would be fixed up and explained; that the trustees had only approximated the cost of the buildings in their statements to shareholders. When your complainants' attorney requested to see the original letters sent to and received from stockholders and any records or minutes by which the trustees claimed authority from a majority of the share-

139 holders to build he was put off with the statement that he would have to wait sometime and that they were in among various cases and could not be produced for some indefinite time in the future, notwithstanding complainants' attorney at the shareholders' meeting nearly two weeks before, had asked and had been promised copies of them. That complainants' attorney replied that they ought to be procurable within two hours and on July 15th gave defendant trustees two days to produce them but has been unable to obtain the same thus far. That your complainants were informed by the trustees shareholders exchanging shares for houses were allowed the amount they had paid in for their shares, but your complainant has been advised by one such former shareholder that he was compelled to lose five hundred dollars on his share to make the exchange; that your complainants cannot state whether there are other such discrepancies but believe there should be a rigid scrutiny of all the trustees' accounts; that your complainants fear that unless

the books, letters and records of the syndicate are required to be forthwith deposited in the registry of the Court the same, when this litigation is at issue, will have been spoliated or fixed up so as to conceal the real and true state of facts and accounts as they exist today and grievous injury will be done your complainants.

14. That your complainants as a result of the recently discovered fraud and misrepresentation of said Thomas G. Hensley, Mellen C. Hooker and Melville Hensey, and of the abuse by the trustees of the powers granted them, their illegal collection of fees and charges from the trust estate contrary to the trust reposed in said trustees as well as the rights of complainants, their mismanagement, extravagance, concealments and failure to keep important accounts in accessible and intelligent condition and to render accounts from which your complainants could have been apprised of the true situation of affairs have utterly lost faith and confidence in the said trustees and in their ability properly to manage said property, and complainants believe and say that the trust estate or syndicate should be wound up under the direction of this Honorable Court and a proper accounting required of the said Thomas G. Hensey and Mellen C. Hooker, as trustees and of Melville D. Hensey as agent of all parties interested in said trust estate or syndicate of all their acts and doings with reference to the aforesaid tract of land and dwellings erected thereon.

Wherefore, complainants pray as follows:

First. That process of subpoena may issue against the defendants, Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, whom they pray may be made parties defendant hereto, commanding them and each of them to appear in this Honorable Court by a day certain, and then and there answer the premises, answer under oath being hereby expressly waived, and to stand to and abide by such order and decree as to this Honorable Court may seem meet and proper.

Second. That Mellen C. Hooker, Thomas G. Hensey and Melville D. Hensey, be compelled to discover and set forth all and singular the book or books and a full and complete list of all documents,

140 papers or records they — have in their possession or custody or under their control showing transactions relating to the land described in this bill of complaint or transactions relating to or concerning the buildings erected on said land or transactions relating to said syndicate and also all matters or transactions by and between the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey and Mrs. Amanda Dean or her agent, Joseph Paul, or by and between the defendants or any or all of them, collectively or individually, so far as the same have any reference to or grew out of their relationship to the syndicate or their relationship to each or one another because of their connection with the said syndicate directly or indirectly. That Thomas G. Hensey be compelled to discover and set forth the name of the persons to whom he transferred two shares of his holdings in said syndicate, the relationship of said persons to himself, when the transfer was made, under what circumstances and the true consideration therefor. That the defend-

ants be compelled to discover and set forth in detail all the facts and circumstances connected with the purchase from Mrs. Amanda Dean or her agent, Joseph Paul, of the land described in this bill of complaint, what was the true consideration therefor, by whom and at what date or dates any payments were made on account thereof, when and how they first learned the aforesaid land was for sale and at what price, what if any rights or interest in or refusal of said land described in this bill of complaint they or any of them had prior to actual transfer of the title to said land from Mrs. Amanda Dean, when and on what consideration the aforesaid land was bought and generally all and singular the facts in relation to the acquisition of title to said land in the name of Melville D. Hensey and the facts connected with the same.

Third. That the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey be compelled to deposit in the Registry of the Court all the books, papers, accounts, vouchers, records or other papers of the said trust estate or syndicate herein referred to, except only the rent book, to await the further order of the Court.

Fourth. That the said defendants, Thomas G. Hensey and Mellen C. Hooker, may be required to disclose what persons are interested in said trust estate or syndicate, what that interest is, and what shares have been disposed of since the original organization of the syndicate the dates on which they were disposed of, to whom and upon what consideration.

Fifth. That pending this suit a receiver may be appointed by this Court to take charge of all the property and assets of every nature and description belonging to the said trust estate or syndicate and hold the same subject to the order of this Court.

Sixth. That the said Thomas G. Hensey and Mellen C. Hooker, and each of them, be enjoined, pending this suit; and perpetually thereafter, from taking any further steps as trustee in and about the management of said property and said assets of said trust estate or syndicate as hereinbefore set forth or from disposing of or encumbering any of said property or real estate belonging to said trust estate or syndicate and now standing in their names or in their possession.

Seventh. That pending an accounting the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey may be restrained and enjoined from hypothecating, mortgaging, selling or disposing of, or placing beyond the jurisdiction of this Court, such certificates of interest or shareholdings as they or each of them may now have or hold in said trust or syndicate, and if necessary be required to deposit the same in the registry of the Court, the same to be held and disposed of by the further order of the Court.

Eighth. That the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey and each of them be required to account to your complainants and other persons in like situation for the difference between the actual cost of said tract of land and the amount charged the syndicate therefore, namely, \$150,000.

Ninth. That an account may be taken under the direction of the Court of all the acts and doings of said Hensey and Hooker or as

trustees as aforesaid and that the said trust estate of syndicate may be wound up under the direction of this Court and such orders and decrees made as will establish and enforce the rights of each of the persons interested.

Tenth. That Thomas G. Hensey and Mellen C. Hooker be removed as trustees of said trust estate or syndicate and that the Court appoint other trustees in their stead or make such other order or decree in this regard as to it may seem meet and proper.

Eleventh. And for such other and further relief as to the Court may seem meet and proper.

CHARLES W. RICHARDSON.
JOSEPH W. LITTLE.
MARY B. CUMMINGS.
W. A. BEVARD.
F. H. CHITTENDEN.
FRANCIS E. GRICE.
B. RICHARDS.
GEORGE C. ESHER.
MARY A. HEINZ.
ALICE TITCOMB.
WILLIAM B. BRITTAINE.

CHAS. H. MERILLAT,
MASON N. RICHARDSON,
EUGENE CARUSI,

Solicitors for Compl'ts.

I do solemnly swear that I have read the foregoing bill by me subscribed, and knew the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

CHARLES W. RICHARDSON.

Sworn and subscribed to before me this 18th day of July A. D. 1903.

[SEAL.]

WALTER C. BALDERSTON,
Notary Public, D. of C.

142

Motion for Leave to Amend.

Filed Apr. 27, 1904.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24084.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

Come now the complainants in the above entitled cause and move the Court for leave to amend their bill in the above entitled cause.

CHAS. H. MERILLAT.
MASON RICHARDSON.

Messrs. A. B. Duvall, Edward H. Thomas, J. J. Weed, Att'ys for Defendants.

Please take notice that we will call up the above entitled motion before Mr. Justice Gould holding an equity court on Monday May 2, 1904, at ten a. m. or as soon thereafter as counsel may be heard.

CHAS. H. MERILLAT,
MASON RICHARDSON,
Att'ys for Complainants.

143

Amendment to Bill.

Filed Apr. 27, 1904.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

No. 24084.

CHARLES W. RICHARDSON et al., Complainants,
vs.

THOMAS G. HENSEY et al., Defendants.

Come now the complainants, by their attorney, Chas. H. Merillat, and by leave of the Court first had and obtained amend their bill of complaint by inserting the following near the end of paragraph 12½ of complainants' amended bill of complaint, and immediately preceding the words: "The complainants are advised and therefore aver."

The interest held in the name of or for or on behalf of either, any or all of the defendants in Lots 11, 12, and 13 in Block 12 Le Droit Park, in the County of Washington, District of Columbia, the same being taken in the name of Thomas G. Hensey and Cyrus Bussey, as trustees for a certain association known as the Ten Syndicate.

The interest held in the name of or for or on behalf of either, any or all of the defendants in Lots 6, 7, 8 of Block 12 in Le Droit Park, and in a certain tract of land of about fifty acres more or less on the Conduit Road near the receiving reservoir in Montgomery County, Maryland, the same being taken in the name of Thomas

G. Hensey and Jackson H. Ralston, as Trustees for the
144 holders of the shares in a certain voluntary unincorporated company known as Norwood Real Estate Company, and the interest of the defendants in any or all of the shares of the Norwood Real Estate Company.

The interest held in the name of or for or on behalf of either, any or all of the defendants in Lots 3 and 4, Block 16, in Le Droit Park, County of Washington, District of Columbia, the same being taken in the name of Thomas G. Hensey and Mellen C. Hooker, as Trustees, for a certain voluntary unincorporated company known as the District Investment Company.

The interest held by or for or on behalf of Thomas G. Hensey in certain bonds of the South American Telephone Company of the par value of \$1,500, the said bonds being assets of the Industrial Savings and Loan Association, and the interest of the said Thomas G. Hensey in said Industrial Association, which was a voluntary unincorporated company, and in the aforesaid telephone bonds which formed a part of its assets having been acquired in part with funds of your complainants.

By adding after prayer 4 $\frac{3}{4}$ of complainants' amended bill a new prayer to be known as prayed 4 $\frac{7}{8}$, to read as follows:

Prayer 4 $\frac{7}{8}$. That the defendants be enjoined and restrained from disposing of any or all of their interests in the real estate, telephone bonds, or other property described in this amendment filed on the — day of — to paragraph 12 $\frac{1}{2}$ of complainants' amended bill of complaint, and that Trustees may be appointed to sell the interest of the defendants and of each of them in the real estate, telephone bonds, shares in the voluntary unincorporated companies named in this amendment to the bill, and to hold the same or proceeds thereof subject to the further order of the Court for the benefit of your complainants and other holders of shares similarly situated.

CHARLES W. RICHARDSON.

DISTRICT OF COLUMBIA, *ss*:

Charles W. Richardson being first duly sworn deposes and says that he has read the foregoing amendment to complainants' bill by him subscribed, and that the facts therein stated upon information and belief he believes to be true. That the same is not made for the purpose of vexation or delay, and that the proposed amendment and the facts and matters therein stated are material and could not with reasonable diligence have been sooner introduced in the bill, the same having been learned only recently by affiant.

CHARLES W. RICHARDSON.

Subscribed and sworn to before me this 26 day of April, A. D. 1904.

[SEAL.]

JNO. L. SMITH,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *ss*:

Charles H. Merillat being first duly sworn deposes and says that he is attorney for the complainants in the above entitled 146 he is attorney for the complainants in the above entitled material, that the facts therein stated are true to the best of affiant's knowledge, information and belief; that the amendment is not interposed for vexation or delay.

CHARLES H. MERILLAT.

Subscribed and sworn to before me this 26 day of April, A. D. 1904.

[SEAL.]

JNO. L. SMITH,
Notary Public, D. C.

(Endorsed.)

Let this be filed.

ASHLEY M. GOULD, *Justice.*

147

Supreme Court of the District of Columbia.

MONDAY, May 28, 1906.

The Court resumes its session, pursuant to adjournment, Mr. Justice Stafford presiding.

No. 24084, Eq. Docket 54.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

This cause coming on to be heard upon the pleadings testimony and other proceedings herein including the several Auditor's reports filed herein on the 2nd day of February, 1906, and the 27th day of March, 1906, and after hearing argument by counsel for the respective parties hereto it is by the Court this 28th day of May A. D. 1906, ordered, adjudged and decreed as follows:

First. That the said Auditor's reports be, and the same hereby are, affirmed.

Second. That the defendants Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey be, and they hereby are decreed and declared jointly and severally to have received of the complainants, and the other parties to this suit, the members of the Le Droit Park Land Syndicate as a trust fund, and to have illegally withheld from said Syndicate or parties the sum of \$25,896 said trust fund, with compound interest thereon amounting on January 10, 1906, to the sum of \$53,819.17, and said defendants aforesaid are ordered and directed to pay over said trust fund of \$53,819.17, with interest thereon from January 10, 1906, to date of payment to Charles H. Merillat and Edward H. Thomas as trustees for the Le Droit Park Land Syndicate on or before the 20th day of June A. D. 1906.

Third. That the defendants Thomas G. Hensey and Melville D. Hensey are decreed and declared to account to complainants and the other parties to this suit, the members of the Le Droit Park Land Syndicate, through their trustees, Charles H. Merillat and Edward H. Thomas, aforesaid, for the further and additional sum of \$15,445.07, with interest thereon from the date hereof, and that the defendant Mellen C. Hooker is decreed and declared to account to the parties aforesaid through said trustees as aforesaid for the further and additional sum of \$13,887.85, over and above the amount of trust funds found to be due by them.

Fourth. That the trustees hereinbefore named, Edward H. Thomas and Charles H. Merillat as trustees for the Le Droit Park Land Syndicate have a judgment and decree against the defendants Thomas G. Hensey and Melville D. Hensey for the hereinbefore mentioned sums of \$53,819.17 with interest thereon from January

148 6, 1906, and for the further and additional sum hereinbefore mentioned of \$15,445.07, and against the defendant Mellen C. Hooker for the hereinbefore mentioned sums of \$53,819.17 with interest thereon from January 6, 1906, and for the further and additional sum hereinbefore mentioned of \$13,887.85, besides the costs of this suit, said costs to be borne by all three defendants herein named, jointly and severally, including the costs of all proceedings before the Auditor, and a counsel fee of \$5,000 to be paid to the attorneys for complainants herein, and that the trustees aforesaid, Edward H. Thomas and Charles H. Merillat, as trustees for the Le Droit Park Land Syndicate have execution thereon as at law.

Fifth. That there be, and hereby is, awarded to counsel for complainants in this cause, Mason N. Richardson, Charles H. Merillat, and Eugene Carusi, a fee of \$9,000 for their services, said fee to be paid out of the funds or estate of the Le Droit Park Land Syndicate, or out of any moneys recovered hereunder from the defendants Thomas G. Hensey and Mellen C. Hooker, or Melville D. Hensey.

Sixth. That the trustees aforesaid are adjudged and decreed to hold the shares in the Le Droit Park Land Syndicate standing in the names of the defendants Thomas G. Hensey and Mellen C. Hooker and Melville D. Hensey on the books of the Le Droit Park Land Syndicate for the use of the said syndicate, and the said syndicate is declared to have a lien on said shares originally issued in the names of Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey for the sum of \$500 unpaid purchase price on each of said shares, with interest thereon at the rate of 6 per centum per annum from January 19, 1893, and Thomas G. Hensey and Mellen C. Hooker and Melville D. Hensey are ordered and directed to turn over and deposit their original shares aforesaid with the aforesaid present trustees of the Le Droit Park Land Syndicate.

Seventh. That unless the money decreed of \$53,819.17 hereinbefore directed to be paid, be satisfied on or before the 20th day of June, A. D. 1906, Thomas G. Hensey be, and he hereby is, adjudged to have held all his right, title and interest as of date the 24th day of August, 1903, the date of the service of an amendment to complainants' bill, naming said property as having been purchased with the fruits of the fraud perpetrated on his co-syndicate members by Thomas G. Hensey in and to the following described lands and premises, to wit:

Lot 19 in Section 3 of Barry Farm, a subdivision in the County of Washington, in the District of Columbia; Lot 13 in Loomis' subdivision of Square 65 in the City of Washington, District of Columbia, and Lot 51 in Gibbs' subdivision of Square 520 in the City of Washington, District of Columbia, as trustee for the Le Droit Park Land Syndicate, and he hereby is ordered and directed to make conveyance as of date August 24, 1903, and to have effect when recorded as of said date, of all his right, title and interest in the real estate aforesaid to Charles H. Merillat and Edward H. Thomas as trustees for the Le Droit Park Land Syndicate, and should said Thomas G. Hensey neglect or refuse to comply with this

149 paragraph of this decree, then this paragraph of this decree shall have the same operation and effect as if the conveyance had been executed conformably to this decree, and said Charles H. Merillat and Edward H. Thomas are authorized and directed as trustees as aforesaid to sell said real estate described aforesaid in this paragraph, unless the same has been previously sold under some prior deed of trust or recorded obligation as hereinbefore set forth, free and discharged from the effect of any transfers or conveyances by said Thomas G. Hensey or his grantees not of record among the land records of the District of Columbia on or before the 24th day of August, 1903, aforesaid. The manner of said sale of the aforesaid real estate shall be as provided by Equity File Rule 91 of the Supreme Court of the District of Columbia. It is further declared, adjudged and decreed that all transfers or conveyances of said real estate not of record on or before said 24th day of August, 1903, aforesaid, but attempted to be recorded since said date, are subject and postponed to the provisions of this paragraph of this decree and satisfaction of the aforesaid sum of \$53,819.17, unless the same have been made under the provisions of some deed of trust or other prior obligation of record prior to the aforesaid 24th day of August, 1903, and in the event that said real estate has been sold since said 24th day of August, 1903, under some prior valid deed of trust or other obligation of record prior to the 24th day of August, 1903, then all the right, title and interest of Thomas G. Hensey in the equity of redemption therein is vested in Charles H. Merillat and Edward H. Thomas, as trustees for the Le Droit Park Land Syndicate, and they are hereby authorized and directed to take such steps as may be deemed necessary by them to reduce such equity of redemption to possession.

Eighth. That unless the money decree of \$53,819.17, hereinbefore directed to be made be satisfied on or before the 20th day of June, A. D. 1906, Mellen C. Hooker be and he hereby is, adjudged, to have held all his right, title and interest as of date the 24th day of August, 1903, the date of the service of an amendment to complainants' bill naming said property as having been purchased with the fruits of the fraud perpetrated on his co-syndicate members by Mellen C. Hooker in and to the south 32 feet by the full depth thereof of Lot 18, in Square 1110 in the City of Washington, District of Columbia, as trustee for the Le Droit Park Land Syndicate, and he hereby is ordered and directed to make conveyance as of date the 24th day of August, 1903, and to have effect when recorded as of said date of all his right, title and interest in the real estate aforesaid to Charles H. Merillat and Edward H. Thomas, as trustees for the Le Droit Park Land Syndicate, and should said Mellen C. Hooker neglect or refuse to comply with this paragraph of this decree, then this paragraph of this decree shall have the same operation and effect as if the conveyance had been executed conformably to this decree, and said Charles H. Merillat and Edward H. Thomas are authorized and directed as trustees as aforesaid to sell said south 32 feet by the full depth thereof of Lot 18, in Square 1110, in the City of Washington, District of Columbia, unless the

150 same has been previously sold under some prior recorded deed of trust or recorded as hereinafter set forth free and discharged from the effect of any transfers or conveyances by said Mellen C. Hooker or his grantees not of record among the land records of the District of Columbia on or before the 24th day of August, 1903, aforesaid. The manner of such sale of the aforesaid real estate shall be as provided by Equity Rule 91 of the Supreme Court of the District of Columbia. It is further declared, adjudged and decreed that all transfers or conveyances of said real estate not of record on or before said 24th day of August, 1903, aforesaid, but attempted to be recorded since said date are subject and postponed to the provisions of this paragraph of this decree, and satisfaction of the aforesaid sum of \$53,819.17, unless the same have been made under the provisions of some deed of trust or other prior obligation of record prior to the aforesaid 24th day of August, 1903, and in the event that said real estate has been sold since said August 24, 1903, under some prior valid recorded deed of trust or other obligation of record prior to the 24th day of August, 1903, then all the right, title and interest of Mellen C. Hooker in the equity of redemption therein is vested in Charles H. Merillat and Edward H. Thomas, as trustees for the Le Droit Park Land Syndicate and they are hereby authorized and directed to take such steps as may be deemed necessary by them to reduce such equity of redemption to possession.

Ninth. That unless the money decree of \$53,819.17 hereinbefore directed to be made be satisfied on or before the 20th day of June A. D. 1906, Thomas G. Hensey be and he hereby is, adjudged to have held all his right, title and interest as of date the 24th day of August, 1903, the date of the service of an amendment to complainants' bill naming said property as having been purchased with the fruits of the fraud perpetrated on his co-syndicate members by Thomas G. Hensey in and to the following described real estate, a tract of land known as Dry Meadows in the County of Washington, District of Columbia, and more particularly described as follows: Beginning for the same at a stone marking corner of the late Charles R. Belt's land, and running thence $41\frac{3}{4}$ degrees east 57.84 perches to a stone thence north 44 degrees east 1.68 perches to a stone on Broad Branch Road thence $15\frac{1}{2}$ degrees west 58.12 perches to Jones' line, thence north 60 degrees west 2.32 perches to a stone and place of beginning containing 9.40 acres of land, more or less, as trustee for the Le Droit Park Land Syndicate, and he hereby is ordered and directed to make conveyance as of date the 24th day of August, 1903, and to have effect when recorded as of said date of all his right, title and interest in the real estate aforesaid to Charles H. Merillat and Edward H. Thomas, as trustees for the Le Droit Park Land Syndicate, and should said Thomas G. Hensey neglect or refuse to comply with this paragraph of this decree then this paragraph of this decree shall have the same operation and effect as if the conveyance had been executed conformably to this decree, and said Charles H. Merillat and Edward H. Thomas are authorized and directed as trustees as aforesaid to sell the interest of Thomas G. Hensey in the aforesaid

151 9.40 acres of the aforesaid tract, known as Dry Meadows, free and discharged from the effect of any transfers or conveyances by said Mellen C. Hooker or his grantees not of record among the land records of the District of Columbia, on or before the 24th day of August, 1903, aforesaid. The manner of such sale of the interest of the said Thomas G. Hensey in the aforesaid real estate shall be as provided by Equity Rule 91 of the Supreme Court of the District of Columbia. It is further declared, adjudged and decreed that all transfers or conveyances of the interest of said real estate not of record on or before said 24th day of August, 1903, aforesaid, but attempted to be recorded since said date, are subject and postponed to the provisions of this paragraph of this decree and satisfaction of the aforesaid sum of \$58,819.17, unless the same have been made under the provisions of some deed of trust or other prior obligation of record prior to the aforesaid 24th day of August, 1903, and in the event that the interest of the said Thomas G. Hensey in the said real estate has been sold since said 24th day of August, 1903, under some prior valid recorded deed of trust or other obligation of record prior to the 24th day of August, 1903, then all the right, title and interest of said Thomas G. Hensey in the equity of redemption therein is vested in Charles H. Merillat and Edwin H. Thomas, as trustees for the Le Droit Park Land Syndicate, and they are hereby authorized and directed to take such steps as may be deemed necessary by them to reduce such equity of redemption to possession.

Tenth. That unless the money decree of \$53,819.17 hereinbefore directed to be made be satisfied on or before the 20th day of June, 1906, Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, be, and they are hereby, adjudged and decreed to have made all their payments made subsequent to the 19th day of January, 1893, on account of their interests in what is described in these proceedings as the Norwood Real Estate Company; the District Investment Co. and the Ten Syndicate with the moneys of the Le Droit Park Land Syndicate, and they be, and are hereby, declared and decreed to hold their interests in said land companies and syndicate aforesaid, acquired by or through payments made since January 19, 1893, as trustees for the Le Droit Park Land Syndicate, and Charles H. Merillat and Edward H. Thomas as trustees for said Le Droit Park Land Syndicate are authorized and directed to take such steps as may be deemed necessary by them to reduce to possession such interests of said defendants in the said land companies and syndicate aforesaid, and to hold the same for the use and benefit of the Le Droit Park Land Syndicate, said trustees Charles H. Merillat and Edward H. Thomas to succeed to all rights and interests of said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey in the said land companies or syndicate aforesaid, as of date of August 24, 1903.

By the Court.

WENDELL P. STAFFORD, *Justice.*

From the foregoing decree, the defendants in open court having noted an appeal to the Court of Appeals, the penalty of the bond for costs is hereby fixed at one hundred dollars.

WENDELL P. STAFFORD, *Justice.*

152 *Order Appointing M. N. Richardson Trustee, Vice E. H. Thomas.*

Filed Jun- 5, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 24084, Doc. 54.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

This cause coming on to be heard on petition of Edward H. Thomas, Trustee, to be allowed to withdraw and resign as such trustee it is by the Court on consideration thereof this 5th day of June, 1906, ordered, that the resignation of said Edward H. Thomas as such trustee be and the same is hereby accepted, and the said trustee is hereby relieved from all duties as such on, from and after this day. And it is further ordered that Mason N. Richardson be and he hereby is appointed trustee in place of said Edward H. Thomas with all the rights, powers and duties heretofore vested in said Edward H. Thomas in this cause, provided however that said Mason N. Richardson before entering on the discharge of said duties shall file herein his several bond to be approved by the Court in and for the sum of ten thousand Dollars (\$10,000). And further, that this cause be and the same is hereby referred to the Auditor of this court to state the account of the trustee Charles H. Merillat and Edward H. Thomas.

WENDELL P. STAFFORD, *Justice.*

Extracts from Ledger Entries of Thomas G. Hensey.

Shareholders: C. Bussey, T. G. Hensey, M. D. Hensey, E. J. Pullman, W. H. Hills, W. Blasland, B. Le Fevre, W. E. Leonard, C. D. Roosa, & M. C. Hooker.

Bussey and Hensey, Trustees, Lots 11, 12 & 13 Blk. 12 L. D. P.

1900.		1900.
May 31.	To awaiting asst. for benefits decision to Rhode Island Ave. extn.....	2722.50
Aug. 7.	" W. H. Hills int..	7.50
1902.		
Ap'l 28.	" " " ..	52.50
1904.		
Oct. 27.	" M. D. Hensey, new loan	500.
	April 24.	By W. H. Hills loan. 500.
	27.	" M. C. Hooker " . 500.
	27.	" M. D. Hensey " . 500.
	May 31.	2d half tax 1900.... 18.51
		1901.
	May 21.	By all tax 1901..... 30.66
	Nov. 30.	" 1st half tax 1902. 15.33
		1902.
	April 30.	" J. Ridout Inj'e'un Ung. 15.
	May 31.	" 2nd half tax 1902. 15.33
		1903.
	May 29.	" All tax 1903..... 28.40
		1904.
	Oct. 27.	" M. D. Hensey loan 822.50
		" Thos. G. Hensey Loan 900.
	31.	" All tax 1904..... 29.82
		1905.
	Oct. 7.	" All tax 1905..... 29.82

Shareholders: C. Bussey, T. G. Hensey, M. D. Hensey, E. J. Pullman, W. H. Hills, W. Blasland, B. Le Fevre, W. E. Leonard, C. D. Roosa, & M. C. Hooker.

Bussey and Hensey, Trustees, Lots 11, 12 & 13, Blk. 12 L. D. P.

1900.		1900.
Ap'l 24.	To W. H. Hills loan. 500.	May 31. By Assts. awaiting benefit charge.. 2722.50
27.	" M. C. Hooker " . 500.	Aug. 7. " W. H. Hills int.. 7.50
27.	" M. D. Hensey " . 500.	1902.
May 31.	" Tax 2nd half 1900 18.51	April 28. " " " .. 52.50
1901.		1904.
May 21.	" All tax 1901..... 30.66	Oct. 27. By M. D. Hensey new loan..... 500.
Nov. 30.	" 1st half tax 1902. 15.33	
1902.		
Ap'l 30.	" Injunction Un- derg. John Rid- out 15.	(See page 398 Same account revers- ing debit & credit.)
May 31.	" 2nd half tax 1902 15.33	
1903.		
May 29.	" All tax 1903..... 28.40	
1904.		
Oct. 27.	" M. D. Hensey loan 822.	
	" Thos. G. Hensey loan 900.	
	31. " All tax 1904..... 29.82	
		1905.
Oct. 7.	" All tax 1905..... 29.82	

155

Certificate No. 2.

Whole Number of Shares, 10, of \$1,750 Each.

Le Droit Park Syndicate.

Know all men by these presents, That we, Cyrus Bussey and Thomas G. Hensey, as joint tenants in fee under a certain deed from Melville D. Hensey, unmarried, dated October 3, 1891, and recorded in Liber No. 1614, folio 403 et seq., one of the Land Records of the District of Columbia, hold the real estate situate in the County of Washington, District of Columbia, and described as follows: All of lots numbered eleven (11), twelve (12) and thirteen (13) of block numbered twelve (12) in A. L. Barber & Co.'s subdivision of Le Droit Park; subject, however, to trusts for \$12,500, upon certain trusts as hereinafter stated.

Whereas, Thomas G. Hensey has contributed one tenth of the sum expended for the purchase of said real estate, and is, therefore, entitled to one tenth undivided interest in said real estate:

Now therefore, in consideration of the premises and said payment, receipt whereof from said Thomas G. Hensey is hereby acknowledged, we, the said Cyrus Bussey and Thomas G. Hensey, do hereby declare that we hold the said real estate upon trusts as follows, for said Thomas G. Hensey, his heirs and assigns, to the extent of the aforesaid undivided interest; that is to say; in and upon the trusts set forth and declared in said deed;

This declaration, and the interest hereunder, shall, at all times, be subject to assessment for its proportionate part of money necessary to pay the aforesaid incumbrances, and interest

156 thereon, and expenses incurred in the execution of the trusts as provided in the deed to said trustees, hereinbefore recited, which said assessments shall be payable within 30 days after written notice thereof shall have been mailed, post paid, to the person assessed or personally served upon him, and, in default of such payment, the said trustees, or the survivor of them, is hereby authorized to sell the interest of such person so in default either at public or private sale, after such notice and upon such terms as they, or the survivor, shall deem best, and to transfer such interest to the purchaser, free from liability on his part, for the application of the purchase money. In the event of any such sale the proceeds shall first be applied to payment of assessments in default, with interest at 6 per cent. from date of notice until paid, and the surplus shall be paid over to the owner of such interest, his heirs or assigns.

This declaration and the interest hereunder, may be transferred by writing, under seal, and upon such transfer the assigned declaration shall be surrendered to the trustees and a new declaration issued in the name of the purchaser, and the trustees shall not be bound to take notice of the rights of a transferee who fails to surrender such assigned declaration and to procure a new one in his own name.

157 Any transferee of such declaration, and interest hereunder, shall thereby be subrogated to all the rights, and subjected to all the liabilities, of the original holder; and the said Thomas G. Hensey as evidence of the acceptance of this declaration, and to confer all necessary power upon said trustees, and *as evidence of the acceptance of this declaration, and to confer all necessary power upon said trustees*, and the survivor of them in the premises, as above set forth, has hereunto set his hand and seal the day and year last herein written.

Witness our hands and seals this 28th day of October, 1891, at Washington, D. C.

CYRUS BUSSEY. [SEAL.]
THOMAS G. HENSEY. [SEAL.]
THOMAS G. HENSEY. [SEAL.]

Signed, sealed and delivered in presence of

(Endorsed:)

For value received I hereby transfer, assign and set over all my right title and interest in and to the within share of stock unto
THOS. G. HENSEY.

22 April, 1902.

158

Certificate No. 1.

Le Droit Park Syndicate.

Issued to Melville D. Hensey, for one tenth undivided interest in
said real estate; witnessed on the 28th day of October, 1891, at
Washington, D. C. by ³

CYRUS BUSSEY.
THOS. G. HENSEY.
MELVILLE D. HENSEY.

Signed, sealed and delivered in presence of

GORDON P. HOOKER.

(Endorsed:)

This is to certify that the trust of \$12500 with all interest & charges have been fully paid. Also dividend of \$452.72 for opening Rhode Island Avenue. Leaving 13521 feet free all incumbrance.

THOS. G. HENSEY, *Trustee.*

April 25, 1900.

159

Certificate No. 4.

Le Droit Park Syndicate.

Issued to Wallace H. Hills, for one tenth undivided interest in said real estate, witnessed on the thirteenth day of November, 1891, at Washington, D. C. by

CYRUS BUSSEY.
THOS. G. HENSEY.
WALLACE H. HILLS.

Signed, sealed and delivered in presence of
G. P. HOOKER.

(Endorsed:)

This is to certify that the trust of \$12,500 with all interest & charges have been fully paid. Also dividend of \$452.72 for opening Rhode Island Ave. Leaving 13521 feet free from all incumbrance.

THOS. G. HENSEY.

April 23, 1900.

For value rec'd I hereby transfer set over and assign unto W. H. Hills

W. H. HILLS.

JAN'Y 24, 1894.

For value received I hereby transfer and set over and assign unto
W. H. HILLS.

160

Certificate No. 8.

Le Droit Park Syndicate.

Issued to William E. Leonard, for one tenth undivided interest in said real estate, witnessed on the twenty-eighth day of October, 1891, at Washington, D. C., by

CYRUS BUSSEY.
THOS. G. HENSEY.
WM. E. LEONARD.

Signed, sealed and delivered in presence of
G. P. HOOKER.

(Endorsed:)

This is to certify that the trust of \$12500 with all interest and charges have been fully paid. Also dividend as per statement of

April 19, 1900, for opening Rhode Island Avenue. Leaving 13521 feet from all incumbrance.

THOS. G. HENSEY, *Trustee.*

April 25, 1900.

Assigned to Thos. G. Hensey on account of final settlement.

W. E. LEONARD.

March 19, 1906.

Witness to the signature of W. E. Leonard.

OSCAR KAYSER.

161

Certificate No. 9.

Le Droit Park Syndicate.

Issued to Mellen C. Hooker, for one-tenth undivided interest in said real estate; witnessed on the twentieth day of April, 1892, by

CYRUS BUSSEY.

THOS. G. HENSEY.

MELLEN C. HOOKER.

Signed, sealed and delivered in presence of

— — —
(Endorsed:)

This is to certify that the trust of \$12500, with all interest & charges have been fully paid. Also dividend of \$452.72/100 for opening Rhode Island Avenue. Leaving 13521 feet from all incumbrance.

THOS. G. HENSEY, *Trustee.*

21 April, 1900.

162

EXHIBIT No. 1.

This indenture, made this third day of October A. D. one thousand eight hundred and ninety-one, by and between Melville D. Hensey unmarried of the District of Columbia of the first part and Cyrus Bussey and Thomas G. Hensey of the same place, joint tenants of the Second part, Witnesseth, that the said party of the first part for and in consideration of the sum of Ten dollars in lawful money of the United States to him in hand paid by said parties of the Second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said parties of the second part, their heirs or assigns or the survivor of them forever, the following described real estate situate in the County of Washington, District of Columbia, to wit: All those certain pieces or parcels of land and premises known and distinguished as and being all of lots numbered Eleven (11) Twelve (12)

and Thirteen (13) in Block numbered Twelve (12) in A. L. Barber and Co.'s subdivision of certain tracts of land now known as Le Droit Park, as per plat recorded in Liber Gov. Shepherd folio 15 in the Surveyor's Office of the said District.

Together, with all the improvements, ways easements, rights, privileges, appurtenances, and hereditaments, to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever either at law or in equity, of the said party of the first part, of, in, to, or out of the said pieces or parcels of land and premises.

163 To have and to hold the said pieces or parcels of land and premises, with the appurtenances unto the only use of the said parties of the second part, their heirs and assigns forever, as joint tenants, in trust nevertheless: First. To hold said real estate for the sole use and benefit of such persons as have contributed to its purchase their heirs and assigns as tenants in common according to their respective contributions until real estate shall be sold as hereinafter provided.

Second. To do generally whatever they, the said Trustees may deem necessary and proper to improve and develop the property and put it into marketable condition.

Third. To borrow such sum or sums of money for such time on such terms, with such privileges of anticipation of payment and partial release and at such rate of interest, payable at such periods as said trustees or the survivor of them shall deem most for the benefit of all concerned, with power and authority to execute such mortgage or mortgages deed or deeds of trusts or other necessary instruments of writing, conveying and encumbering the whole or any part of said land, as they or the survivor of them may deem necessary for the purpose of securing the payment of such sum or sums and the interest thereon; and the note or notes representing borrowed money may if said Trustees prefer be signed by any other person and said Trustees and the survivor of them shall apply the sum so borrowed

164 for the best interest of all concerned, but no person lending money to said Trustees or the Survivor of them shall be required to see to the due exercise of any discretion or to the due application of any money by said Trustees or the Survivor of them.

Fourth. To lease or sell the said real estate or any part thereof at any time in their or his discretion and to make sale, at such place and price, and upon such terms, and after such notice as the said Trustees or the Survivor of them shall deem most for the interest of all concerned, and in case any such sale to convey the real estate sold in fee simple or for any less estate to the purchaser or purchasers thereof, his her and their heirs and assigns upon compliance with the terms of the sale free and discharged from all liability for the due exercise of any discretion reposed in said Trustees and all liability on the part of said purchaser or purchasers his her or their heirs and assigns to see to or account for the due application of the purchase money or any other money paid by said Trustees or the Survivor of them, it being the intention of this deed to give said

Trustees and the Survivor of them and his heirs as broad and ample power and authority to improve, encumber, lease, sell, and convey said real estate as if they or he owned the same in fee simple absolute.

Fifth. To render due account of their management of the trust and to make due and prompt distribution among persons interested, their heirs and assigns, as tenants in common according to 165 their respective interests, but no purchaser or other person dealing with said Trustees or the Survivor of them with reference to said trust shall be under any obligation to see to such accounts or distribution. And further, that he the said party of the first part and his heirs shall and will at any and at all times hereafter, upon the request and at the cost of said parties of the Second part their heirs or assigns, make, execute, deliver and acknowledge all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of said pieces or parcels of land and premises and appurtenances, unto the said parties of the Second part their heirs or assigns, as the said party of the Second part their heirs or assigns, or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

Words added on first page before signature "In Block numbered Twelve (12) &" "Liber"

MELVILLE D. HENSEY. [SEAL.]

Witness:

W. G. REED.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Wilson G. Reed, a Notary Public in and for the aforesaid District, Do hereby certify that Melville D. Hensey, un-166 married party to a certain Deed bearing date on the Third day of October 1891 and hereunto annexed personally appeared before me, in the District aforesaid, the said Melville D. Hensey being personally well known to me to be the person who executed the said Deed and acknowledged the same to be his act and deed. Given under my hand and Notarial seal this 18" day of October 1891.

[SEAL.]

WILSON G. REED,
Notary Public.

(Endorsed:) 2.30 p. m., Received for Record, October 16 1891, and recorded in Liber No. 1614, folio 409 et seq. of the Land Records of the District of Columbia and examined by B. K. Bruce, Recorder.

167

EXHIBIT No. 2.

Collateral Note.

\$500.00

WASHINGTON, D. C., April 24, 1900.

Three months after date, for value received, I promise to pay to the order of Cyrus Bussey and Thos. G. Hensey Trs. Five hundred (500.) Dollars, with interest at Six p. c. per annum, having deposited with them as collateral security, for payment of this or any other liability, or liabilities of mine to said Bussey & Hensey Trustees, due or to become due, or that may be hereafter contracted, the following property, viz: One share of Bussey & Hensey Trustees Stock No. 4 dated November 13, 1891. Signed by Bussey & Hensey Trustees. The present value of which property is \$1350.00 with the right on the part of the said Bussey & Hensey Trs. from time to time to demand such additional collateral security as they may deem sufficient should the market value thereof decline and upon my failure to comply with any such demand, this obligation shall forthwith become due, with full power and authority to the said Bussey & Hensey Trs. or the sur. or assigns, in case of such default in the payment of any of the liabilities above mentioned at maturity, to sell, assign and deliver the whole, or any part of such securities, or any substitutes thereof, or additions thereto, at any brokers' board, or at public or private sale, at option, at any time *time*, or times thereafter, without advertisement, or notice of the same, and

168 with the right on their part to become purchasers thereof at such sale or sales, freed and discharged of any equity of redemption, and after deducting all legal or other costs for collection, sale or delivery, to apply the residue of the proceeds of such sale or sales, so made to pay any, either or all of said liabilities, as said Bussey & Hensey Trs. shall deem proper, returning the overplus to the undersigned; and I will still remain liable for any amount unpaid, with interest as aforesaid.

W. H. HILLS,
Treas'y Dep't.

(Ten Cents—Internal Revenue Stamp.)

(Endorsed:) Bussey & Hensey, Trs. 1900, Aug. 7th, Int., \$7.50. 1902, April 24th, Int. to date, \$52.50. Paid April 28th, 1902.

169

EXHIBIT 3.

Collateral Note—General.

\$500.

WASHINGTON, D. C., 27 April, 1900.

Three months after date I promise to pay to the order of Bussey & Hensey Trustees Five hundred 00/100 Dollars, at 1300 F street, N. W., without defalcation, for value received, with interest at the rate of Six per centum per annum from the date hereof till paid,

and as collateral security for the payment of this obligation on the day of the maturity thereof, have delivered therewith the following, that is to say: one share of Stock in Le Droit Park Syndicate Bussey & Hensey Trustees part of lots 11, 12 & 13 Bl'k 12 which property I hereby certify, it being one of the conditions upon which this loan is made, belongs absolutely to — that there are no prior liens against it, and that I have a right to pledge it, I hereby authorize and empower the holder of this obligation (provided the same be not paid at maturity) to sell said collateral at public or private sale, at the option of the said holder, and to transfer, assign, and deliver the same to the purchaser or purchasers thereof without reference or notice to —; and if in the opinion of the holder of this obligation the value of said collaterals or any substitutes hereafter deposited should at any time be less than — Dollars, the

undersigned shall upon demand furnish such further security
170 as will be satisfactory to said holder, and in case of failure so to do, this note thereupon, at the option of said holder, shall become due and payable forthwith, and the whole or any part or parts of said securities, or substitutes, or additions, may be sold as herein provided, at the option of said holder, and in case of any sale or other disposition of any of the securities aforesaid, the proceeds thereof shall be applied in the first place to the payment of all costs and expenses incurred; in the second place to the payment of the amount then due on this obligation; and lastly to return to M. C. Hooker whatever residue, if any, may then remain; it being also distinctly understood that should there be any deficiency I further promise and agree to pay the same to the holder of this obligation on demand.

It is also agreed and understood that upon the sale of any of the said collaterals, the holder of this obligation at their option may become the purchaser thereof, and hold the same thereafter in — own right, absolutely free from any claim of the undersigned.

This deposit of security is without prejudice to the right of the holder of this note at their option to enforce collection of the same after its maturity by suit or in other lawful manner.

M. C. HOOKER,
1417 F St. N. W.

(Ten Cents—Internal Revenue Stamp.)

(Endorsed:) M. C. Hooker, \$500, 27 Ap'l, 1900, 3 mos., July 27, 1900.

171

EXHIBIT 4.

\$900.00.

WASHINGTON, D. C., *October 27th, 1904.*

Six months after date I promise to pay to the order of Bussey and Hensey Nine hundred 00/100 Dollars, at R'm 405 Colorado Bldg. for value received, with interest at the rate of six per cent. per annum until paid.

Name, THOS. G. HENSEY,
Residence, R'm 405 Colorado Bldg.

EXHIBIT 5.

*Statement.*WASHINGTON, D. C., *March 7, 1906.*

Expenditures.

Assessment for benefits Rhode Island Ave.....	\$3376.43
Curbs	157.06
	.98
General tax 1906 (Special tax \$3555.86 total).....	3555.86
Commission on sale (David Moore).....	270.
General taxes 1900 to 1905.....	167.87
Injunction proceedings (John Ridout).....	15.
Advertising 4 years.....	75.
Personal Services.....	118.48
Hills Estate cash.....	192.01
Hooker "	137.01
	83.09
Leonard "	[104.66]*
	83.09
Bussey "	[104.66]*
	83.09
Pullman "	[104.66]*
	83.09
Blasland Estate cash.....	[104.66]*
	83.09
Le Fevre Cash.....	[104.66]*
	83.09
Roosa Estate "	[104.66]*
	728.93
Leonard Real Estate note first trust.....	[707.35]*
	728.93
Bussey " " " "	[707.35]*
	728.93
Pullman " " " "	[707.35]*
	728.93
Blasland Estate Real Estate note first trust.....	[707.35]*
	728.93
Le Fevre " " " "	[707.35]*
	728.93
Roosa " " " "	[707.35]*
Due from Hills Estate (on stock).....	620.

[*Figures enclosed in brackets erased in copy.]

173	Due from Hooker Estate (on stock)	675.
	" " Melville Hensey (on stock)	812.01
	" " T. G. Hensey " "	812.01
Fractions .....		.04
		2
		\$12322.35

CYRUS BUSSEY, *Trustee.*
THOS. G. HENSEY, *Trustee.*

Examined and found correct:

E. J. PULLMAN.
M. C. HOOKER.
CYRUS BUSSEY.
BENJAMIN LE FEVRE.

174

WASHINGTON, D. C., *March 7, 1906.*

Bussey and Hensey, Trustees in Trust, Lots 11 and 12, Block 12,
Le Droit Park.

Receipts.

Retained from damages.....	\$2722.50
Received from W. H. Hills, interest.....	60.
Interest due from Hills on loan.....	120.
" " " M. D. Hensey, loan.....	69.87
" " " Hooker on loan.....	175.
" " " M. D. Hensey, principal.....	10.49
" " " Thos. G. Hensey, loan.....	77.07
" "	

Balance due from sale (less taxes \$2376.43 assumed by purchaser)	7750.
	\$12322.35
	57 Tax

(In pencil) \$12322.92

CYRUS BUSSEY, *Trustee.*
THOM. G. HENSEY, *Trustee.*

Examined and found correct:

E. J. PULLMAN.
M. C. HOOKER.
CYRUS BUSSEY.
BENJAMIN LE FEVRE.

175

EXHIBIT 6.

Thos. G. Hensey. Melville D. Hensey. Walter R. Hensey.

Thos. G. Hensey & Co.,
 Real Estate, Loans and Insurance.
 No. 1300 F Street Northwest.
 Telephone Call 1165-2.

WASHINGTON, D. C., *April 19, 1900.*

Gen. Cyrus Bussey, Kellogg Building.

DEAR GENERAL: The settlement respecting the interest you hold in lots 11, 12 and 13, block 12, Le Droit Park, connected with the Rhode Island Ave. extension is as follows:

The award made by the Jury was..... \$18,704.00
 In which you hold one-tenth interest which would be.. 1,870.40

You are chargeable with the following debits:

For legislative expenses, attorney's and wit- nesses' fees	\$224.45
Assessments for benefits, awaiting the decision of the Courts	272.25
Debt and interest	820.92
Old account and interest, due Thos G. Hensey	100.06
Check	452.72
<hr/>	
Total	\$1870.40

This property is now free of incumbrance, general taxes paid to January 1st, 1900, the remaining tract contains 13,521 feet. It has a frontage of 178 feet on R. I. Ave., with an average depth of 75 feet, which can be subdivided into ten lots of 18 feet front each, which would give each share-holder 1350 square feet of ground, which at \$1.25 a square foot would amount to \$1687.00 or at \$100. a foot would equal \$1350.00.

Very respectfully yours,

THOS. G. HENSEY, *Trustee.*

T. G. H.

176

EXHIBIT W. E. L. No. 1.

Promissory Note—D—Collateral Security.

\$500.

WASHINGTON, D. C., *Sept. 5", 1895.*

Two years after date, for value received, I promise to pay to the order of Thos. G. Hensey, at 1300 F st. N. W. Five hundred dollars, with interest at six per cent. per annum, having deposited with him

as Collateral Security for payment of this or any other liability or liabilities of mine to said Thos. G. Hensey due or to become due, or that may be hereafter contracted, the following property, viz: One (1) share Le Droit Park Stock Bussey & Hensey Trustees No. 8 The present market value of which property is now \$1750 00/100 with the right on the part of the said Thos. G. Hensey from time to time to demand such additional collateral security as he may deem sufficient, should the market value thereof decline, and upon my failure to comply with any such demand, this obligation shall forthwith become due, with full power and authority to said Thos. G. Hensey or his assigns in case of such default in the payment of any of the liabilities above mentioned at maturity, to sell, assign, and deliver the whole or any part of such securities, or any substitutes thereof or additions thereto, at any broker's board, or at public or private 177 sale, at his option, at any time or times thereafter, without advertisement or notice to me and with the right on his part to become purchaser thereof at such sale or sales, freed and discharged of any equity of redemption. And after deducting all legal or other costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale or sales so made to pay any, either or all of said liabilities as said Hensey shall deem proper, returning the overplus to the undersigned; and I will still remain liable for any amount unpaid, with interest as aforesaid.

[W. E. LEONARD.]*

178 *Extracts from Testimony of Defendant in Equity Cause No. 24084.*

Equity. No. 24084.

RICHARDSON
vs.
HENSEY.

WASHINGTON, D. C., FRIDAY, April 22d, 1904—
2:00 o'clock p. m.

THOMAS G. HENSEY was recalled for further cross examination.

* * * * *

Q. Now, when were payments made on account of the Ten Syndicate purchase? A. I do not remember.

Q. Have you had the deeds ever since? A. I think it is likely.

Q. Have you any records that will show when payments were made? A. I have not.

Q. (Continuing:) On account of that purchase? A. I have not, as those records were in the old book which became so dilapidated that it was done up and sent up to the garret, the Ten syndicate having been settled up with the share-holders, the title cleaned up, and

payments made to the share-holders. It was settled, so far as the indebtedness was concerned and the payment of the money to the shareholders, the remaining land still being their property.

179 Q. Have you the deeds of the Ten syndicate, all of them? A. I think it is likely.

Q. I will ask you whether or not there was a payment of \$2500 on account of the Ten syndicate's mortgage made in the year 1893? A. I cannot remember, but my impression is that there was a payment made.

Q. How much? A. I cannot tell.

Q. You have no knowledge at all on the subject? A. No; I could not give you the remotest idea.

Q. Have you given attention to the affairs of the Ten syndicate of late? A. Not those things that have been settled up and passed away. I have not revived my memory at all about it.

Q. Have you made a search for the book of the Ten syndicate? A. I have.

Q. Are there any papers anywhere in your office that bear on the Ten syndicate? A. Nothing but tax receipts and deeds. I think I have those.

Q. I would like you to produce them at the next session. How was the Ten Syndicate formed? I want its basis of organization. A. Property was purchased for \$17,500, all told, divided into ten shares of \$1,750 each. Trustees, Cyrus Bussey and myself.

180 That is all the organization there was about it.

Q. Who were the original ten? A. I have given you a list. They were all original except the last name, I think.

Q. The last name is M. C. Hooker? A. Yes.

Q. From whom did he purchase his share? A. I do not remember.

Q. You have no knowledge whatever as to whom the man was? A. No, sir; I have not.

Q. Is your memory less clear about this than about the affairs of the Le Droit Park syndicate? A. Yes; for this reason: That I have not looked or thought over the question of the Ten Syndicate in any way.

Q. It has come up pretty frequently in these hearings? A. I paid no attention to it. I do not think it belongs in this hearing. I have had other matters to attend to. The inquisition instituted in this Hensey-Hooker matter has absorbed my attention more than anything else.

Q. It has frequently been referred to in this inquiry, has it not, and your interest in that? A. I have been asked very often by yourself.

Q. I will ask you whether or not you did not enter into an agreement with James McLean to pay him in 1893 \$2500 on account of the mortgage held by him on lots 12 and 13? A. I have no recollection—have you finished?

181 Q. (Continuing:) On condition that he would extend a loan of \$2000? A. I do not remember just now. I pre-

sume that may be so. If the agreement is in existence, it speaks for itself.

Q. I will ask you whether or not—— A. (Interrupting.) Have you such an agreement?

Q. (Continuing:) The date of that agreement was not October 7th, 1893? A. Have you such an agreement?

Q. (Continuing:) And whether or not you have not that agreement among the deeds of the Ten syndicate? A. Not that I know of. But, have you such an agreement?

Q. Yes. A. Well, let me see it.

Q. From the record I have a transcript of it. A. From the Recorder of Deed's office?

Q. Yes. A. It may be so. I do not so testify. If you have the document itself, that ought to be sufficient.

182 WASHINGTON, D. C., SATURDAY, *April 23d, 1904*—

2.00 o'clock p. m.

Whereupon THOMAS G. HENSEY resumed the stand for further cross-examination.

* * * * *

Q. The year 1893, did Mr. Hooker have occasion, on account of any of these other enterprises in which he was interested, to make checks payable to your order, other than the Le Droit Park syndicate. A. Mr. Hooker may have done so. I think he made checks of payment on his share in the Ten syndicate.

* * * * *

WASHINGTON, D. C., MONDAY, *April 25th, 1904*—

2.00 o'clock p. m.

Whereupon THOMAS G. HENSEY resumed the stand for further cross examination.

* * * * *

Q. Did you make payments in the year 1893, after January 19th, on account of your interest in that property? A. I did.

Q. What was the amount of those payments in that year? 183 A. I don't remember.

Q. In the year 1893? A. Well, whenever it was demanded by the party holding the notes.

Q. You are one of the trustees, I believe? A. I am.

Q. Have you no account showing what moneys you have paid and when, on account of that tract of land? A. I did until the matter was cleaned up.

Q. Did you not keep a record of it in the books of Thomas G. Hensey or Thomas G. Hensey & Company? A. I did. I kept it in an old book that was somewhat dilapidated and was done up for the purpose of having it bound, and was sent upstairs to the garret, and, through an inadvertence, and carrying other stuff up there by the clerks of the office, and subsequently, I suppose, it went out with the stuff that was supposed to be valueless.

* * * * *

Q. Now, as to the Ten Syndicate. Please let me have what you have. A. Here you are. (Handing same to counsel.)

Q. Mr. Hensey, please, from the deeds which are here produced, give the history of the transaction whereby the Ten syndicate acquired the land in block 12, standing in its name? A. There is a deed from A. M. Barber to Melville Hensey, lot 11, block 12, dated the 10th day of September, 1891, consideration \$5133.15.

184 Q. The date of recordation? A. Recorded October 2nd, 1891.

Q. Now the next deed. A. The next is from James McLain to Melville D. Hensey, lot- 12 and 13, same block, the 10th of September, 1891, and recorded October 2nd, 1891. Is that all you want from that?

Q. Oh, is the consideration given? A. The consideration is \$100.

Q. Do you know what the true consideration was? A. I do not. The next is a deed in trust from Melville D. Hensey to Cyrus Bussey and Thomas G. Hensey, dated on the 3rd day of October, 1891, the consideration is \$10.00.

Q. What was the true consideration? A. I don't remember. I can say that for the three lots the consideration was \$17,500. The deed was recorded October 16th, 1891. Is that all you want?

Q. That is all I want. Now, what, if anything, had you to do with the negotiations resulting in the title being taken by Melville Hensey? A. None whatever. The negotiations for the purchase were made by Melville Hensey.

Q. What, if any, knowledge had you at the time of the price that he had paid? A. The information he gave me.

Q. Which was what? A. \$17,500.

Q. Do you know whether or not Joseph Paul was the agent through whom he negotiated those deals? A. I think he was.

185 Q. Were you present at the—— A. (Interposing.) At no part of the proceedings was I present.

Q. What, if any, payments have been made on any account because of that syndicate? A. There were various payment- made at different times, after the first payment, until the final debt of \$8,000 was paid off, as the result of the extension of Rhode Island Avenue.

Q. Have payments been made on account of the principal, or were payments made on account of the principal in the year 1893, or the interest on the principal? A. I don't remember, but interest was undoubtedly paid, and possibly some of the principal.

Q. I would like to ask whether or not you have not among your papers an agreement whereby, in the month of October, 1893, some \$2500 was to be paid, and an extension made of it—— A. I have been unable to find such an agreement, but I will make a further search. What is that date?

Q. October, 1893. The agreement with McLain. A. What else in that connection.

Q. It also contains a provision for an extension. A. Well, it only alludes to that particular agreement.

Q. That is all, yes. A. If I have it and I can find it I will produce it.

186 Mr. MERILLAT: Might we, if that is not obtainable, introduce a memorandum from the Recorder of that agreement?

Mr. DUVALL: Yes.

The WITNESS: I have an indistinct recollection of some transaction with Mr. McLain, but I am unable to tell from memory.

Mr. MERILLAT: Well, I can give you what it was now. (Reading): October 7th, 1893, agreement between McLain and Busey recites that Busey and Hensey are indebted to McLain in \$6500 represented by \$2500 maturing February 10, 1893. \$200 maturing February 10, 1894, with mortgage on lots 12 and 13. That Busey and Hensey wish to pay at maturity the note of \$2500 and interest on others, and wishes to extend time of note of \$2000 maturing February 10, 1893 in one year, and Busey and Hensey agree to pay entire \$4,000 Feb'y 10, 1894, in consideration whereof extension is granted.

The WITNESS: I presume that is correct, if it is on the record that way.

Mr. MERILLAT: I will say this was taken from the Title Company's books, and not from the office of the Recorder of Deeds.

Q. Now, I will ask you to state, Mr. Hensey, whether that agreement is correct or not—is the substance of that agreement that was made? A. With the faint recollection that I have of the incident, as quoted by you from the record, I should say it was.

187 Q. Please state whether or not the \$2500 was paid as agreed. A. I don't remember.

Q. And whether or not at the maturity the entire obligation was cancelled as to those lots, the maturity be- October, 1894? A. I think it is very likely, that it was paid off, and a new loan obtained, but I am not certain as to that.

Q. Please state whether or not you paid your share of that \$2500 which was agreed to be paid October 2nd, 1893? A. I presume it is altogether likely that I did.

Q. State whether or not interest has been paid on the balance—whether you paid your share since October 2nd, 1893. A. I think that is very likely, up to the time the debt was paid off.

Q. Now, have taxes been paid by the Ten syndicate since January 19th, 1893, on this property? A. They have.

Q. To what extent? A. Up to the last year, including 1903.

Q. Have you the amount of those taxes? A. No, sir, I have not, excepting—

Q. State whether or not you paid your share of the taxes. A. I did.

Q. Have you any data that would show at all? A. I sent out settlements to each one. I can't tell whether the tax bills are here or not. One moment. Here they are. Here are a lot of tax certificates and tax bills. They are all here.

188 Q. Now, I would like you to read the amount, please, the tax payment.

Mr. DUVALL: Mr. Merillat, you are lumbering this record up here with a lot of utterly irrelevant stuff.

Mr. MERILLAT: I think not. My judgment is that the tax was a
lien.

Mr. WEED: A lien—how have you got it?

Mr. MERILLAT: Well, lis pendens, if you choose to prefer that title.

Mr. WEED: I was not aware that your lis pendens commenced until you had brought suit.

The WITNESS: The tax bills all seem to be here up to and including 1903, paid.

Q. Did you pay your share of those out of your general bank accounts? A. I presume I did.

Q. And did the moneys that you received on account of these commissions, the De Lashmut commission, the loan commission, the Sprigg Poole transaction, the connection with rents and such deductions as you say you received on account of the original purchase of the Le Droit Park, go in any wise into your general account—general bank account? A. I presume they did.

* * * * *

189 *Extracts from Check Stub Books of Mellen C. Hooker.*

No. 156. Am't for'd.....	1630	35
Deposit, 189-.		
To Thos. G. Hensey.....	1630	35
Date, Apr. 25, 1895, for Bussey & Hensey Syndicate..	21	
Balance.....	1609	35
No. 51. Am't for'd.....	1322	00
Deposit, 189-.		
To Thos. G. Hensey.....	1322	00
Date Apr. 5, 1894, for Int. on 10 Syndicate.....	21	
Balance.....	1301	00

190

EXHIBIT J. PAUL No. 1.

Thos. G. Hensey, Melville D. Hensey, Attorneys at Law, 1300 F
street, N. W.

WASHINGTON, D. C., Oct. 12, 1894.

Received of Thomas G. Hensey Ninety (\$90) dollars account
Interest on \$3,000. on lot 11-Block 12-Le Droit Park to Oct. 2, 1894.
JOSEPH BAUER

EXHIBIT J PAGE NO. 2

\$90.00

WASH., D. C., Apr'l 25. '95.

Rec'd from Thos. G. Hensey & Co. Ninety dollars for 6 months
interest to Ap'l 2, '95 on 2 notes \$1500.00 ea- of M. D. Hensey Lot
11, Bl'k 12.

JOSEPH PAUL.

EXHIBIT J. PAUL No. 3.

\$90.00

WASH., D. C., *May 3, '93.*

Rec. from T. G. Hensey Ninety dollars for 6 months interest to Ap'l 2/93 (on two notes of M. D. Hensey each for \$1500.00 and interest endorsed on notes.

JOSEPH PAUL.

191 \$822.00

WASHINGTON, D. C., *27 October, 1894.*

Six months after date I promise to pay to the order of Bussey and Hensey Eight Hundred and twenty 00/100 Dollars, at Rm. 405 Colorado Bldg. for value received, with interest at the rate of six per cent. per annum until paid.

Name: MELVILLE D. HENSEY,

Residence: 1300 F Street, N. W.

192

EXHIBIT T. G. HENSEY No. 1.

\$4000#

WASHINGTON, D. C., *April 29th, 1896.*

Three years after date, We promise to pay to the order of Arthur T. Brice the sum of Four thousand Dollars, for value received, with interest at the rate of 5½ per cent. per annum until paid—the interest to be paid in equal instalments semi-annually.

Payable at office of Riggs & Co., Washington, D. C.

[THOS. G. HENSEY,]* Trustee.

CYRUS BUSSEY, Trustee.

[Stamped across face:] Paid April 17/1900.

No. 2 of 2 Due.

Secured by Deed of Trust to Charles C. Glover and Thomas Hyde on lots 11, 12, 13 Bl. 12 Le Droit Park.

(Endorsements.)

42680.

Thos. G. Hensey and C. Bussey, Trustees.

\$4000 & int. 5½% S. A.

June, 1900.

29/2 [May]* '99.

Riggs and Co.

(Mrs.) — — — pay to the order of
 E. M. M. Rivinus
 without recourse to me.
 Arthur T. Brice.

-ov. 3, 1896. Int. Paid to 29 Oct. '96.....	\$110
-pr. 30, 1897. Int. Paid to 29 Apr. '97.....	110
Nov. 8, 1897. Int. Paid to 29 Oct. '97.....	110
Apr. 29, 1898. Int. Paid to 29 Apr. '98.....	110

[May 10, 1898. Int. Paid to 29 Oct.]*	
Nov. 14, 1898. Int. Paid to 29 Oct. 98.....	110
May 2, 1899. Int. Paid to 29 Apr. '99.....	110
Nov. 14, 1899. Int Paid 29 Oct. '99.....	110

193

EXHIBIT T. G. HENSEY No. 2.

\$4000#

WASHINGTON, D. C., *April 29th, 1896.*

Three years after date, We promise to pay to the order of Arthur T. Brice the sum of Four thousand dollars, for value received, with interest at the rate of $5\frac{1}{2}$ per cent. per annum until paid—the interest to be paid in equal instalments semi-annually.

Payable at office of Riggs & Co., Washington, D. C.

[THOS. G. HENSEY,]* *Trustee.*
CYRUS BUSSEY, *Trustee.*

[Stamped across face:] Paid April 17/1900.

No. 1 of 2 Due.

Secured by Deed of Trust to Charles C. Glover and Thomas Hyde on lots 11, 12, 13 Bl. 12 "Le Droit Park.

(Endorsements.)

[42519]* 53311.

Thos. G. Hensey & Cyrus Bussey, Trustees.

\$4000 Int. $5\frac{1}{2}\%$ S. A.

29/2 May '99. R. & Co.

Pay to the order of
Jane A. Riggs (in pencil)
without recourse to me.
Arthur T. Brice.

1896, Nov. 3, 6 mos. int. paid to Oct. 29/96.

1897, April 30, 6 mos. int. paid to April 29/97.

1897, Nov. 10, 6 mos. int. paid to Oct. 29/97.

1898, April 29, int. paid to date, \$110.

1898, Nov. 14, int. paid to Oct. 29, '98, \$110.

1899, May 3, int. paid to April 29, '99, \$110.

1899, Nov. 14, int. paid to Oct. 29, '99, \$110.

\$102.68.

194

EXHIBIT T. G. H. No. 3.

\$1500.00/100.

WASHINGTON, D. C., *October 2nd, 1891.*

Two years after date I promise to pay to the order of Amzi L. Barber the sum of Fifteen hundred Dollars, for value received, with

interest thereon until paid at the rate of Six per cent. per annum. Payable semi-annually. Payable at Lincoln Nat. Bank.

[MELVILLE D. HENSEY,]*
#1300 F St. N. W.

[Stamped across face:] Paid & cancelled.

Secured by Deed of Trust on Lot 11 B'k 12 L. D. Park. Joseph Paul, John T. Arms, Trustees.

(Endorsements.)

Pay to order of
J. J. Albright.
Amzi L. Barber.

Pay to order of
Jennie R. Bennell.
J. J. Albright.

J. R. Bennell, by
Joseph Paul, Ag't.

Int. paid to Ap'l 2, 1892.
Int. paid to Oct. 2, 1892.
Int. paid to Ap'l 2, 1893.
Int. paid to Oct. 2, 1893.
Int. paid to Ap'l 2, 1894.
Int. paid to Oct. 2, 1894.
Int. paid to Ap'l 2, 1895.
Int. paid to Oct. 2, 1895.

\$1500.00/100. WASHINGTON, D. C., *October 2nd, 1891.*

Three years after date I promise to pay to the order of Amzi L. Barber the sum of Fifteen Hundred Dollars, for value received, with interest thereon until paid at the rate of Six per cent. per annum. Payable semi-annually. Payable at Lincoln Nat. Bank.

[MELVILLE D. HENSEY,]*
#1300 F St. N. W.

[Stamped across face:] Paid & cancelled.

Secured by Deed of Trust on Lot 11 B'k 12 L. D. Park. Joseph Paul, John R. Arms, Trustees.

[*Words enclosed in brackets erased in copy.]

(Endorsements.)

Pay to the order of
J. J. Albright.
Amzi L. Barber.

Pay to order of
Jennie R. Bennell.
J. J. Albright.

J. R. Bennell, by
Joseph Paul, Ag't.

Int. paid to Ap'l 2, 1892.

Int. paid to Oct. 2, 1892.

Int. paid to Ap'l 2, 1893.

Int. paid to Oct. 2, 1893.

Int. paid to Ap'l 2, 1894.

Int. paid to Oct. 2, 1894.

Int. paid to Ap'l 2, 1895.

Int. paid to Oct. 2, 1895.

196

EXHIBIT T. G. H. No. 5.

\$2,500.00/100. WASHINGTON, D. C., *October 2, 1891.*

One year after date I promise to pay to the order of James McLain, the sum of Twenty-five hundred Dollars, for value received, with interest thereon until paid at the rate of Six per cent. per annum. Payable semi-annually. Payable at Lincoln Nat. Bank.

MELVILLE D. HENSEY,
#1300 F St. N. W.

[Stamped across face:] Paid & cancelled.

Secured by Deed of Trust on Lot- 12 & 13 B'k 12 L. D. Park.
Joseph Paul, John T. Arms, Trustees.

(Endorsements.)

86028.

Melville D. Hensey.
\$2500 & int. a 6% S. A.
2/5 [Oct. '92.]*
2 Apr. '94 (in pencil).
Lincoln N. Bank.

Oct. Int. Paid to ____.

Oct. 24, '92. Int. Paid to 2 Octo. '92..... \$150.

Apr. 8, 1893. Int. Paid to 2 Apr. '93..... 75.

Riggs & Co., Bankers.

Paid

Oct. 7, 1893.

Washington, D. C.

[James McLain.]

[* Words and figures enclosed in brackets erased in copy.]

[† Name upside down in copy.]

197

EXHIBIT T. G. H. No. 6.

\$2,000.00/100. WASHINGTON, D. C., *October 2nd, 1891.*

Two years after date I promise to pay to the order of James McLain the sum of Two thousand Dollars, for value received, with interest thereon until paid at the rate of Six per cent. per annum. Payable semi-annually. Payable at Lincoln Nat. Bank.

MELVILLE D. HENSEY,
#1300 F St. N. W.

[Stamped across face:] & cancelled.

(Secured by Deed of Trust on Lot- 12 & 13 B'k 12 L. D. Park, Joseph Paul, John T. Arms, Trustees.)

(Endorsements:)

86029.
Melville D. Hensey.
\$2000 & int. a 6% S. A.
2/5 Oct. ['93.]*
96 (in pencil).
Lin. N. B'k.

James McLain.

Oct. 24, '92. Int. Paid to 2 Octo. '92.....	\$120.
Apr. 8, 1893. Int. Paid to 2 Apr. '93.....	60.
Oct. 7, 1893. Int. Paid to 2 Octo. '93.....	60.
Oct. 8, 1894. Int. Paid to 2 Octo. '94.....	120.
[Apr. 9, 1895. Int. Paid to 2 Ap'l '95.....]	60]*
Credited in error.	
Oct. 4, 1895. Int. Paid to 2 Octo. '95.....	120.

Riggs & Co.
Bankers.
Oct. 5, 1893.
Washington, D. C.

Riggs & Co., Bankers.
Paid.
May 2, 1896.
Washington, D. C.

[* Words and figures enclosed in brackets erased in copy.]

198

EXHIBIT T. G. H. No. 7.

\$2000.00/100. WASHINGTON, D. C., *October 2nd, 1891.*

Three years after date I promise to pay to the order of James McLain the sum of Two thousand Dollars, for value received, with interest thereon until paid at the rate of Six per cent. per annum. Payable semi-annually. Payable at Lincoln Nat. Bank.

MELVILLE D. HENSEY,
1300 F St. N. W.

[Stamped across face:] Cancelled.

Secured by Deed of Trust on Lot- 12 & 13 B'k 12 L. D. Park.
Joseph Paul, John T. Arms, Trustees.

(Endorsements.)

86030.

Melville D. Hensey.

\$2000 & int. a. 6% S. A.
2/5 Oct. '96. Lin. N. B'k.

James McLain.

Oct. 24, '92. Int. Paid to 2 Oct. '92.....	120.
Apr. 8, 1893. Int. Paid to 2 Apr. '93.....	60.
Oct. 7, 1893. Int. Paid to 2 Octo. '93.....	60.
Oct. 8, 1894. Int. Paid to 2 Octo. '94.....	120.
[Apr. 9, 1895. Int. Paid to 2 Ap'l '95.....]	60]*
Credited in error.	
Oct. 4, 1895. Int. Paid to 2 Octo. '95.....	120.

Riggs & Co.

Bankers.

Oct. 5, 1894.

Washington, D. C.

Riggs & Co., Bankers.

Paid.

May 2, 1896.

Washington, D. C.

[* Words and figures enclosed in brackets erased in copy.]

199 Office of the Columbia Title Insurance Company, Fifth and E Streets N. W.

No. 7064.

WASHINGTON, D. C., *May 13, 1896.*

The Columbia National Bank of Washington

Pay to the order of Thomas G. Hensey and Cyrus Bussey, Trustees, Five hundred and twenty three 81/100 Dollars.

\$523.81.

In re 11, 12, 13, Bl'k 12.

Le Droit Park.

J. D. CAUGHLAN,
Secretary Columbia Title Insurance Company.

Endorsements.

Thomas G. Hensey, Trustee;
Cyrus Bussey, Trustee.
Thomas G. Hensey.

Stamped: Sec. National Bank.

May 15, 1896.
Washington, D. C.

Marked paid.

200

EXHIBIT M. D. H. No. 1.

Thos. G. Hensey, Melville D. Hensey, Walter R. Hensey, Attorneys-at-Law, 1300 F Street N. W.

Telephone 1165-2.

WASHINGTON, D. C., *June 29th, 1896.*

Schedule of Expenditures Made by Thos. G. Hensey on Lots 11, 12, & 13, Block 12, Le Droit Park.

1891.

October	2.	To Title Company's Papers, Recording, &c.	\$43.75
	"	Interest on same to [date]* April 29/96.	11.81
November 30.	"	Tax half 1892.....	24.36
	"	Interest to April 29, 1896.....	6.57

1892.

Ap'l	7.	" Asphalt pavement	630.50
	"	Interest to April 29th, 1896.....	141.82
May	11.	" Releasing trust recording &c.....	7.
"	31.	" Tax 2nd half 1892.....	24.35
"	"	Interest on same to Ap'l 29, 1896.....	5.60
Oct.	25.	" Contribution church advent.....	25.
	"	Interest on same to [date]* Ap'l 29/96.	5.25

1893.

[*Words enclosed in brackets erased in copy.]

May	31.	" Tax—all—1893	47.67
		" Interest on same to Ap'l 29/96.....	10.22
		" Recording & extra interest.....	2.33
Nov.	29.	" 1st half tax 1894.....	60.85
		" Interest on same to Ap'l 29, 1896.....	5.47
		1894.	
Feb'y	1.	" Watermain tax	22.76
"		" Interest on same to Ap'l 29/96.....	2.04
		" Fees and watermain tax.....	25.
May	31.	" Tax 2nd half 1894.....	60.85
		" interest on same to Ap'l 29/96.....	7.
		(In pencil)	1151.20
		1895.	
May	29.	To tax all 1895.....	114.44
		" Interest on same to Ap'l 29/96.....	6.09
Nov.	30.	" 1st half 1896.....	57.22
		" Watermain &c.	19.87
		" Interest on same to Ap'l 29/96.....	2.01
		(In pencil)	1370.83

201

EXHIBIT M. D. H. No. 2.

Thos. G. Hensey & Co., Resident Agents, 405 Colorado Bldg.,
Washington, D. C.

Ten Syndicate.

The following charges:			Credit.
1891.			
2	Oct. Title Co.'s papers &c.	43.75	From new loan..... \$1000.
	1st half tax 1892....	24.36	
1892.			
7	Ap'l. Asphalt Pavement...	630.50	Balance T. G. H..... 797.02
	2nd half tax 1892....	24.35	
	Contribution to church	25.	\$1797.02
	All tax 1893.....	48.67	
	1st half tax 1894....	60.85	
	Watermain tax.....	22.76	
	" "	19.87	
	Fees on watermain..	25.	
	2nd half tax 1894...	60.85	
	All tax 1895.....	114.44	
	1st half 1896.....	57.22	
	2nd half 1896.....	60.19	
	Riggs New Loan com.	80.	
	Title Co. fees.....	41.	
	7 mos. int. on \$7000..	245.	
	Releasing trust.....	7.	
	Int. 4 yrs. 27 days on \$600.50	154.10	
	Int. on advance taxes	52.11	
			\$1797.02

Ten Syndicate.

To Balance due T. G. H.....	\$797.02
" Taxes 1897 due T. G. H..	87.53
" " 1898 " ..	81.78
" " 1899 " ..	86.84
" " 1900 1st half due T. G. H....	38.33
" Interest on $\frac{1}{2}$ amt. due T. G. H.....	31.50
	<hr/>
	\$1123.00

Mrs. Roosa a/c.

Dr.	Cr.
	1899.
Balance expense a/c.....	May 13. By Cash \$63.95
	1900.
	Ap'l 19. Due T. G. H..... 32.60
	[48.35]*
	[\$112.30]*
	7 mos. int. on \$350..... 12.25
	Com. on loan..... 3.50
	<hr/>
	\$112.30

[* Figures in brackets erased in copy.]

EXHIBIT T. G. H. No. 9.

*Statement on Taxes Paid on Pt. of Lots 11, 12, & 13, Block 12, Plat 15,
Le Droit Park.*

Assessed in the Names of Cyrus Bussey and Thos. G. Hensey,
Trustees.

Years.	Tax.	Penalty.	Total.	When paid.	By whom.	Day book.
1893..	48 67		48.67	May 31, 1893	Thos. G. Hensey	53/263
1894..	121 70		121.70	{ Nov. 29, 1893 May 31, 1894	..... do	59/172
		Advertisement			Thos. G. Hensey & Co.	59/257
1895..	114 44		114.44	May 31, 1895	Thos. G. Hensey	65/9
1896..	114 44		114.44	{ Nov. 30, 1895 May 14, 1896	..... do	69/11
1897..	68 67	6 87 3.60	79.14	March 31, 1898	Book don't show Thos. G. Hensey & Co.	66/199 42/100
1898..	73 02	8 76	81.78	Feb'y 28, 1899	Thos. G. Hensey	43/173
1899..	73 02	10 22 3.60	86.84	Ap'l 16, 1900	Thos. G. Hensey & Co.	44/59
1900..	36 51	1 82	38.33	Ap'l 16, 1900	Thos. G. Hensey	89/128
" bal. 18 51	.....		18.51	May 31, 1900	..... do	91/157
(In pencil:) Watermain.			22.76	Feb. 1, 1894	..... do	

204 *Memo. Introduced per Stipulation from Records in Office of Recorder of Deeds.*

Liber 1617, folio 192:

Oct. 2, 1891, James McLain et ux Ellen C. conveyed in fee to M. D. Hensey Lots 12 and 13 Block 12 Le Droit Park; consideration \$100.

Liber 1617, folio 195:

Oct. 2, 1891, Amzi L. Barber et ux Julia conveyed in fee to M. D. Hensey Lot 11 Block 12 Le Droit Park; consideration \$5133.15.

Liber 1617, folio 197:

Oct. 2, 1891, M. D. Hensey conveys above lot 11 to Joseph Paul and John T. Arms, in trust to secure part purchase mortgage of \$4000 to Amzi L. Barber represented by three notes, one for \$1000 at one year and two others for \$1500 each at one and two years; interest 6 per cent.

Liber 1617, folio 201:

Oct. 2, 1891, M. D. Hensey conveys above lots 12 and 13 to Joseph Paul and John T. Arms in trust to secure James McLain \$6,500, represented by one note for \$2,500 at one year and two for \$2,000 each at 2 and 3 years; interest 6 per cent.

Liber 1619, folio 124:

Oct. 5, 1891, M. D. Hensey conveys above lots 11, 12 and 13 to Thos. G. Hensey and Lyman D. Landan to secure E. C. Fitz Simmons \$2000, one note at 6 months; interest 6 per cent.

Liber 1614, folio 409:

Oct. 16, 1891, M. D. Hensey by deed in trust conveys to Cyrus Bussey and Thomas G. Hensey, as trustees for contributors to purchase money as tenants in common Lots 11, 12 and 13 Block 12; consideration \$10, May 11, 1892.

Liber 1682, folio 389:

May 6, 1892, Thos. G. Hensey and Lyman D. Landan Trustees release to Bussey and Hensey trustees lots 11, 12 and 13 from trust dated Oct. 2, 1891, recorded in Liber 1619, folio 124, to secure Fitz Simmons, indebtedness thereby secured being paid.

205 Liber 1849, folio 315:

Sept. 27, 1893, agreement between James McLain as of first part and Bussey & Hensey, trustees of second part to above lots 12 and 13. Recites indebtedness on three notes one for \$2,500 maturing Oct 2, 1893; one for \$2,000 maturing Oct. 2, 1893; and one for \$2,000

maturing Oct. 2, 1894, secured on Lots 12 and 13 Block 12 Le Droit Park. States that whereas party of second part desires to pay at maturity note of \$2,500 maturing Oct. 2, 1893, with interest thereon as well as interest on the other two notes in full to date and wishes to extend the other note for one year and whereas the party of the second part promises in consideration of the granting of the extension to pay the \$4,000 on Oct. 2, 1894, with interest, now in consideration of the aforesaid promises by party of the second part the party of the first part grants extension of time for payment of the \$2,000 note for one year.

Liber 2110, folio 383:

April 29, 1896, Hensey & Bussey, Trustees, convey to C. C. Glover and Thomas Hyde, Trustees, Lots 11, 12 and 13 to secure Arthur T. Brice \$8,000 represented by two notes even date each for \$4,000 at 3 years; interest 5½ per cent.

Liber 2135, folio 128:

June 1, 1896, Joseph Paul and John T. Arms, Trustees, release Lots 12 and 13 from trust in Liber 1617, folio 201, October 2, 1891, indebtedness having been paid.

Liber 2135, folio 130:

May 8, 1896, Joseph Paul and John T. Arms, Trustees, release Lot 11 from trust in Liber 1617, folio 197, Oct. 2, 1891, indebtedness having been paid.

Liber 2483, folio 129:

April 17, 1900, C. C. Glover and Thomas Hyde, Trustees, release trust recorded in Liber 2110, folio 383, April 29, 1896, indebtedness having been paid.

206 Bussey and Hensey, Trustees in Trust, Lots 11 and 12, Block 12, Le Droit Park.

Affidavit.

We hereby certify that the amount not included in disbursements received for damages in the Rhode Island Avenue extension matter was \$2722.50; that said sum was loaned by the Trustees on the following dates, and the amounts to shareholders, as follows: April 24, 1900, W. H. Hills \$500.; April 27, 1900, M. C. Hooker \$500.; October 27, 1904 M. D. Hensey \$822.50; October 27, 1904, T. G. Hensey \$900.;

That no loans have been made since October 1904, as above stated, nor have any loans been made since the institution of Equity Cause 26121, to anyone from said fund.

The statement furnished and audited by E. J. Pullman, Benjamin Le Fevre, M. C. Hooker, and Cyrus Bussey, on the 7th of March, 1906, and in pursuance of said settlement, the interests of said T. G.

Hensey, M. D. Hensey, M. C. Hooker and W. H. Hills, being in possession of the Trustees, were surrendered and the interests of the said Henseys ceased on said stock, balance due Hills and Hooker as reported in said statement.

CYRUS BUSSEY.
THOS. G. HENSEY.

Subscribed and sworn to before me this 21st day of May, A. D., 1906.

[SEAL.]

FRED G. ROSE,
Notary Public.

207

Exceptions to Report of Auditor.

Filed Jun- 15, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 24084.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

And now come the Trustees of the Le Droit Park Syndicate, Charles H. Merillat and Mason N. Richardson, heretofore appointed by decree of the Court in the above cause and duly qualified and parties hereto, and they hereby except and object to the report and findings of the Auditor of the Court in the matter of the distribution of proceeds of sale of real estate of the Ten Syndicate to the Bethany Baptist Church, as appears by the report of the Auditor filed herein on the 4th day of June 1908, and for reasons and grounds of such objections and exceptions, they state as follows:

1. That said report and findings are based on misstatements of the facts in evidence made the basis of said report and findings as against your exceptants: namely, that Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker each and all of them had assigned, or transferred or borrowed upon their interests and certificates in the

208 Ten Syndicate, prior to the date of the amendment to the bill in Equity No. 24084, attacking their interests, filed in said cause, and upon which a decree was rendered in favor of complainants, in said cause, and that it was not proved Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker had made payments that enhanced the value of their interests in the Ten Syndicate being without foundation in fact in the evidence and directly contrary to said evidence, as hereinafter more specially set forth.

2. That said report and findings as a whole are erroneous in fact and in law, as hereinafter more specifically set forth.

3. That the said Auditor's report and its findings are erroneous and contrary to the decree and instructions of the Court, in that it

fails to find what sum or sums of money were paid by Thomas G. Hensey, Melville D. Hensey, and Mellen C. Hooker, subsequently to January 19, 1893, on account of their interests in what is described as the Ten Syndicate, the interests in said Syndicate, held in the name of Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, having been decreed by the Court to be held for and on behalf of your exceptants to the extent that payments had been made subsequently to January 19", 1893, on account of the interests of the said Melville D. Hensey, Thomas G. Hensey, and Mellen C. Hooker, in the said Ten Syndicate, the fact being that the evidence shows affirmatively and clearly that Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker had, subsequent to January 19, 1893, made payments on account of their interests in what is described as the Ten Syndicate and that the Auditor has failed to state or find the amount of said payments.

209 4. That said report and findings are erroneous in that they do not find that your exceptants are entitled to any interest or share in the proceeds of sale herein mentioned, and in that they do not find your exceptants entitled to three-tenths of all payments of any kind or nature whatsoever made on account of principal, interest, taxes and other expenses of the Ten Syndicate, paid subsequently to January 19, 1893, by Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker on account of their interests in the Ten Syndicate, and what the total of such payments by each of the three persons aforesaid was.

5. That said report is erroneous in that it fails to find Cyrus Bussey negligent in the performance of his duties as Trustee and liable and responsible to the Ten Syndicate for the misuse of its funds, and the improper and unwarranted loans made to the members of the Ten Syndicate or persons holding title of membership in the security of their own shares, and for the unlawful payment of moneys to Benjamin Le Fevre, one of the members of said syndicate, on account of improper and illegal alleged services at the Congress of the United States in connection with affairs of the Ten Syndicate.

6. That said report and findings are erroneous in that it allows to the counsel for Cyrus Bussey, the negligent Trustee, aforesaid, the sum of \$500, said allowance being improper and likewise having no support in the pleadings or evidence herein.

210 7. In that said report fails to state that under the terms of the deed in trust and the Syndicate agreement under the terms of the deed in trust and the Syndicate agreement under which the title to the property was held no transfers of said certificates could be made except in a form prescribed by the Syndicate agreement, and that said form and mode of transfer was not allowed.

8. In that said report is erroneous in that it fails to find that the Syndicate certificates or interests of said Thomas G. Hensey, Melville D. Hensey, and Mellen C. Hooker in the Ten Syndicate were non-negotiable, and that whosoever acquired or attempted to acquire said Syndicate certificate or interest or any interest therein did so subject to all the equities and burdens chargeable against said Syndicate certificates and interests in the said Ten Syndicate and that said Syndicate certificates or interests aforesaid were chargeable with

equities and burdens arising out of the payments made on account of said interests subsequently to January 19, 1893, as decreed by the Supreme Court of the District of Columbia, in this cause, and by failing to state the amount of payments made on account of said certificates or interests subsequently to January 19, 1893.

9. In that said report and findings do not give due faith and credit to the decree of this Court, passed in this cause on the 28 day of May 1906, and are subversive thereof.

211 10. In that said report is erroneous on page 3 thereof, in failing to state that the entire property of the Ten Syndicate consisted of unimproved real estate, that it had no means of raising funds except by assessments on its members, until the year 1900 when certain of its land was condemned and paid for, and that the note for \$2,500 paid on October 7th, 1893 was paid by means of a pro rata assessment levied on the shares of each member of the Ten Syndicate and that Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker did pay their pro rata one-tenth of the amount of the principal and interest of said note and that the proceeds of sale to the Bethany Baptist Church are chargeable in favor of your exceptants with the payment of three-tenths of said \$2500 and interest, with interest compounded on said three months' payment in favor of your exceptants.

10½. That said report and findings are erroneous in charging costs of the proceeding against your exceptants.

11. In that said report is erroneous on page 4, in stating that a portion of the proceeds arising out of the condemnation of land of the Ten Syndicate by the District Authorities for public purposes was loaned on April 24 to "certain of the members on the security of their interests, \$500 to Thomas G. Hensey, Melville D. Hensey, and Mellen C. Hooker and W. H. Hills, each; and in October 1904, an additional amount was loaned to Thomas G. Hensey increasing

the loan to him to \$900, and an additional amount was loaned

212 to Melville D. Hensey, increasing the amount of his indebtedness to \$822," and also in stating and in finding on page 18 of said report that the Ten Syndicate or its Trustees at the date of the filing of the amendment of April 27" 1904, of the complainants in Equity No. 24084, were "the holders of the certificates or declarations which had been issued to the two Henseys and Hooker, holding them as security for moneys loaned or advanced upon them, being therefore vested with the legal title, possession and equitable interest etc.", said statement of facts being erroneous and the conclusions of law based thereupon not only erroneous in point of law, but erroneous in point of fact, for the reason that the statement that Thomas G. Hensey had borrowed \$500 of the Ten Syndicate as part of said \$900 loan made on October 4, 1904, is without any basis whatsoever as matter of fact and upon the record, the testimony showing conclusively that the first and only loan made by Thomas G. Hensey from the Ten Syndicate or its Trustees was made in October 1904, and was then for the sum of \$900.00, as will appear from the note offered in evidence the testimony adduced and the books and documents produced in evidence, and that said report likewise is erroneous in stating that the Ten Syndicate or its Trustees at the time of the making of the

loan of \$822, to Melville D. Hensey was the owner or holder of the syndicate certificate or interest in the Ten Syndicate, the fact being that said loan had been paid, and a new loan made or attempted to be made by the Ten Syndicate of its Trustees to said Melville D.

Hensey, the old loan being paid off, and the transaction being 213 a new one, and subject to the rights of your exceptants, under their amendment filed in the above cause April 27 1904; also in that said report is erroneous in holding as matter of law, that there could be any transfer of or assignment of the interests of said Thomas G. Hensey, Melville D. Hensey, and Mellen C. Hooker, in said Ten Syndicate that would divest the rights of your exceptants in said certificates or interest or would enable the Ten Syndicate, its members or trustees to acquire the same free from the burdens and equities with which the same were chargeable in favor of your exceptants, for the payments that had been made subsequent to January 19, 1893 on account of the interests of the three persons aforesaid in the said Ten Syndicate.

12. That said report is erroneous in that the payments made by Thomas G. Hensey, Melville D. Hensey, and Mellen C. Hooker on account of their interests in the Ten Syndicate did not go to increase the market or intrinsic value of the real estate held by the Ten Syndicate, as recited on pages 11 and 12 of said Auditor's report, said statement being unwarranted, being beyond the jurisdiction of the Auditor, in disregard of the decree passed herein and being contrary to the evidence in said cause, said evidence showing that each of the said three persons named paid their one-tenth pro rata share of the principal and interest of a loan of \$2500 secured on said property and paid off in October 1893, and their respective one-tenth each of interest and taxes, including sewer and paving taxes.

Also that said report is erroneous in holding and finding 214 on pages 11 and 12, that your exceptants are not entitled to the amount paid by Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, subsequent to January 19, 1893, on account of their interest in the Ten Syndicate for taxes and other purposes, necessary to the preservation of said property of the Ten Syndicate, and of the interest of said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey therein;

Also that said report is erroneous in not finding that some of the payments on account of taxes did actually and directly and immediately go to enhance the market and intrinsic value of the property of the Ten Syndicate, in that as the evidence shows, amounts thereof were paid on account of curbing, sewerage, asphalt, and other special improvements, that might enhance the value of said property;

Also in that said report is erroneous in stating that it would be unjust to Cyrus Bussey, Trustee of the Ten Syndicate, to find him liable on account of the claim of the Le Droit Park Land Syndicate or its Trustees on the interest of Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, in the Ten Syndicate, in view of the fact that the evidence in said cause discloses gross negligence and inattention to his trust on the part of said Cyrus Bussey, as Trustee of the Ten Syndicate, and that as such trustee, he necessarily would have known of the misapplication or misuse of the said Syndicate

funds in the loan of the same improperly and unlawfully on the interests of the Members of the Ten Syndicate, and payment of improper and illegal alleged legislative expenses.

215 13. In that said report is erroneous in stating on page 13, thereof, that there is no sufficient proof that Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, contributed any portion of the payment of the note of \$2500, described on page 3 of said report, and that it does not appear how or from what sources the fund was derived for such payment, the evidence in said cause showing on the statement of Mellen C. Hooker himself that he had paid his pro rata proportion of said note, the admission of Thomas G. Hensey proving that he likewise had paid his pro rata share, and there being furthermore a prima facie presumption that each and every of the members of the said syndicate complied with their syndicate agreement and paid their pro rata share of said payment, as they admittedly did of tax and interest payments, and the evidence further discloses the fact that Thomas G. Hensey made all the payments on account of said Ten Syndicate out of his personal funds, and there being no evidence to show that any person other than himself had contributed to his share of such expenses or payments, or to the shares of Melville D. Hensey or Mellen C. Hooker.

14. In that said report is erroneous in stating on page 14, that the evidence of Melville D. Hensey, and Mellen C. Hooker showed that no assessment was made for the purpose of raising funds to pay said note of \$2500, this statement being in direct conflict with the check and stub-book entry of Mellen C. Hooker, produced in evidence;

15. In that said report is erroneous on said page 14, in stating that the proof failed to establish payments by either of the 216 Henseys or Hooker, after January 19, 1893, excepting on assessments for payments of taxes and interest. Said statement is erroneous in point of fact, without support in the evidence, and contrary to the evidence.

16. In that said report is erroneous as matter of law, in holding on page 14 that there is no equitable reason for requiring the other members of the Ten Syndicate now to account to the Le Droit Park Trustees for payments made by the Henseys and Hooker subsequent to January 19, 1893, and is contrary to the decree of this Court.

17. In that said report is erroneous in finding in effect on pages 15 and 16, that the Trustees of the Ten Syndicate had the power to loan the assets of the Ten Syndicate on syndicate shares or interests held by members of the Ten Syndicate, because said Trustees of the Ten Syndicate had no power except that expressly given and that no such power as was exercised is given to them, and the exercise of such unlawful power did directly result in injury and harm to your exceptants as the equitable owners of interests in the syndicate certificates or interests in the Ten Syndicate held by said Mellen C. Hooker, Melville D. Hensey and Thomas G. Hensey.

18. In that said report is erroneous in holding on pages 17 and 18 of said report that there could be a transfer to or acquisition by the Ten Syndicate of the interests of Thomas G. Hensey, Mellen C.

Hooker, and Melville D. Hensey in certificates held by these three persons aforesaid that would discharge the same free from the burdens and equities chargeable there against, arising out of payments

made on account of said shares by the persons aforesaid, and
217 that it was necessary that Cyrus Bussey should have been

made a party to the amendment or lis pendens filed by your exceptants to the original bill of complaint in the above-entitled cause. And your exceptants say that as matter of law it was unnecessary to have made said Cyrus Bussey a party to said cause or amendment for the reason that the title to the certificate or interest held by the two Henseys and Hooker individually in the Ten Syndicate were held by them in their own separate and individual right, and was separate and distinct from the title to the real estate in question.

19. In that said report is erroneous in finding on page 20 that a counsel fee should be allowed to the Solicitors for the petitioner, Cyrus Bussey, and chargeable upon the entire fund, the fact being that no testimony was taken with regard thereto, and no claim made or advanced at any hearing, or upon the record for a solicitor's fee, and furthermore it being improper that the negligent Trustee, Cyrus Bussey should be allowed any counsel fee whatsoever, for matters arising out of his own -faithfulness to his trust.

20. Your exceptants specifically object to each and every item of disbursement placed or mentioned in the sub title head in said report of distribution of proceeds of sale of real estate of the Ten Syndicate to the Bethany Baptist Church, in that said report of distribution of proceeds of sale is erroneous in allowing a counsel fee of \$500 to solicitors for the petitioner Cyrus Bussey.

Also: In that said report is erroneous in finding the amount due to the estate of Wallace H. Hills to be \$128.08, in that the 218 same does not take into account the amount to which said estate is liable or indebted to your exceptants as equitable owners, or equitably entitled to share in the same to the pro rata extent of the payments made by Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, on account of their interests in said syndicate, subsequent to January 19, 1893, and in charging your exceptants with costs, and counsel fees.

Also: In that said report is erroneous in finding the amount due to Mellen C. Hooker to be \$73.88, in that the same does not take into account the amount to which said Mellen C. Hooker is liable or indebted to your exceptants as being equitably entitled to share in the same to the pro rata extent of the payments made by said Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, on account of their interests in said syndicate, subsequent to January 19, 1893, and in charging your exceptants with costs and counsel fees.

Also: In that said report is erroneous in finding the amount due to Cyrus Bussey to be \$778.72, in that the same does not take into account the amount to which said Cyrus Bussey is liable or indebted to your exceptants as being equitably entitled to share in the same to the pro rata extent of the payments made by said Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, on account of their in-

terest in said syndicate, subsequent to January 19, 1893, and in charging your exceptants with costs and counsel fees.

Also: In that said report is erroneous in finding the amount due to E. J. Pullman to be \$778.72, in that the same does not take into account the amount to which said E. J. Pullman is liable or indebted to your exceptants as being equitably entitled to share in the same to the pro rata extent of the payments made by said Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, on account of their interests in said syndicate, subsequent to January 19, 1893, and in charging your exceptants with costs and counsel fees.

Also: In that said report is erroneous in finding the amount due to Ruth G. Blasland to be \$778.78, in that the same does not take into account the amount to which said Ruth G. Blasland is liable or indebted to your exceptants as being equitably entitled to share in the same to the pro rata extent of the payments made by said Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, on account of their interests in said syndicate, subsequent to January 19, 1893, and in charging your exceptants with costs and counsel fees.

Also: In that said report is erroneous in finding the amount due to William E. Leonard to be \$778.78, in that the same does not take into account the amount to which said William E. Leonard is liable or indebted to your exceptants as being equitably entitled to share in the same to the pro rata extent of the payments made by said Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, on account of their interests in said syndicate, subsequent to January 19, 1893, and in charging your exceptants with costs and counsel fees.

Also: in that said report is erroneous in finding the amount due to the estate of C. D. Roose to be \$778.78, in that the same does not take into account the amount to which said estate of C. D. Roose is liable or indebted to your exceptants as being equitably entitled to share in the same to the pro rata extent of the payments made by said Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, on account of their interests in said syndicate, subsequent to January 19, 1893, and in charging your exceptants with costs and counsel fees.

Also: in that said report is erroneous in finding the amount due to the said Benjamin Le Fevre to be \$778.78, in that the same does not take into account the amount to which said Benjamin Le Fevre is liable or indebted to your exceptants as being equitably entitled to share in the same to the pro rata extent of the payments made by said Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey on account of their interests in said syndicate, subsequent to January 19, 1893, and in charging your exceptants with costs and counsel fees.

21. In that said report and finding of distribution is erroneous not finding that Benjamin Le Fevre is not entitled to any share whatever in the distribution of the proceeds of sale, because of his negligence in the administration of his trust.

22. In that said report and finding of distribution is erroneous in not finding that Benjamin LeFevre is not entitled to any shore what-

221 soever in the distribution of the proceeds of sale in that his share is chargeable with the moneys improperly and unlawfully paid to him on account of alleged legislative expenses.

23. In that said report and finding of distribution is erroneous in not finding that each and every one of the shares of the persons found entitled to share in the distribution of the proceeds of sale aforesaid is chargeable with and to the amount of payments made by Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey, on account of their interests in said syndicate, subsequent to January 17, 1893.

24. In that said report and finding of distribution is erroneous in not allowing to your exceptants out of said proceeds of sale the amount of all payments made, but not reported by the Auditor, by Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey on account of their interests in the Ten Syndicate, subsequently to January 19" 1893, together with compound interest on each and every payment made from the date of said payment, to the date of distribution.

25. In that the Auditor erred in sustaining over the objection of your exceptants as shown on page 22 of the testimony objection to the question put to Cyrus Bussey as to what the term "old account" referred to, and what the item legislative expenses, attorneys and witness fees \$224.45 meant.

26. In that the Auditor erred on page 30, in sustaining the objection by counsel for Cyrus Bussey, in so far as concerned Cyrus Bussey, the testimony or explanation of the witness Benjamin Le Fevre

222 as to the item of legislative expenses, the same being material as showing that improper and illegal expenses and disbursements had been made to the knowledge of Cyrus Bussey as trustee, or as to which he should have had knowledge in the exercise of ordinary diligence, and that the same put him upon notice of the improper payments and transactions thereafter made, and charged him with liability for said improper payments.

25. That the Auditor erred in sustaining the objection to which exception was duly noted of the question put by your exceptants to Mellen C. Hooker as shown by page 74 of the record of what if any knowledge he had as a member of the Ten Syndicate of any funds being received after the original purchase of the land and prior to the condemnation for the extension of R. I. Ave., said question being directly relevant and material as shown by the report of the Auditor himself, in which he alleges or claims that there is no evidence showing from what source or how the deed of trust note of \$2500 on the Ten Syndicate property was paid off, in October 1893.

26. That the Auditor erred in sustaining the objection to which an exception was duly noted put as appears from page 86 of the record to William E. Edmonston, with reference to check No. 7064, made on account of a loan made in May 1896 on the property of the Ten Syndicate, the said check showing that Cyrus Bussey in breach of his trust had made over the entire fund to the personal credit of his co-trustee, Thomas G. Hensey.

27. That the Auditor erred as shown by page 91 of the record of

the testimony in sustaining the objection to which an exception was duly noted to the question put by your exceptants to Melville 223 D. Hensey, as to what knowledge he had as to who made payments on account of the indebtedness of the Ten Syndicate, during the years between 1893 and 1900, the question being directly material to show that all payments on account of the Ten Syndicate property were made by Thomas G. Hensey.

28. That the Auditor erred as shown by page 93 of the record in sustaining an objection to which an exception was duly noted, of the question put by your exceptants to Melville D. Hensey as to whether or not Thomas G. Hensey, prior to 1900 rendered official statements to the members of the Ten Syndicate.

29. That the Auditor erred as shown by page 94 of the record in sustaining the objection to which exception was duly noted of the question put to Melville D. Hensey as to what he had to do with the agreement whereby there was an extension of payment of the balance of the deed of trust indebtedness on the Ten Syndicate property in consideration of the payment off in 1893 of \$2500, said evidence being directly material and relevant.

30. In that said report fails to find the Ten Syndicate and its trustees, and Cyrus Bussey, each and all liable to your exceptants for failure to collect or make any attempt to collect the moneys of the Ten Syndicate loaned on notes maturing at short notice or intervals, to the two Henseys and Hooker, on their shares in the Ten Syndicate, but permitted the same to become overdue and interest on the same long in arrears without attempt to collect the same.

224 Wherefore and because of said objections, and exceptions hereinbefore fully set forth, your exceptants object and except to said report of the Auditor, and appeal therefrom to this Honorable Court.

CHARLES H. MERILLAT,
MASON N. RICHARDSON,
Exceptants, Trustees, and Solicitors for Exceptants.

Opinion.

Filed Apr. 20, 1909.

Equity. No. 24084.

RICHARDSON et al.

vs.

HENSEY et al.

Plaintiffs stand only in the exact situation of the defendants, Hensey, Hensey and Hooker, with respect to the other members of the Ten Syndicate, with rights no greater but the same. They assume the interests of the defendants with those interests unencumbered with whatever fixed charges were necessary to carry and preserve the res; they are entitled to withdraw only the value of the interests, and accretions to that value, if any there be; they are not entitled

to withdraw contributions for the liquidation of fixed charges, such as interest and taxes, for the payment of such fixed charges is no accretion to the value. It seems to me immaterial whether the Trustee, Bussey, was negligent in the respects claimed; for if it be conceded that he was, yet his negligence violated no rights 225 of the plaintiffs; the matter was between him and the then members of the Ten Syndicate and if they chose to acquiesce in his conduct, even negligent conduct, and ratified it, either expressly or by implication no one else has the right to complain, for no one else had any right that could be affected. So with respect to the loans made by the Trustee to members of the Syndicate; even if the Trustee were unauthorized to make them, yet if he did actually make them on the faith of a certain security to the owner of the security, that security must respond to the extent of the money advanced; and no person who is privy to the borrower can be heard to complain of the transaction; for if the Trustee was without power to make the loans the borrower knew it at the time and the hands of his privy are tied by this knowledge the same as the hands of the borrower would be if he personally were urging the point.

3. The undertaking of the plaintiffs, by the amendment of April 27, 1904, to their bill, was to reach and subject an undivided interest in real estate; and in order for the operation of the doctrine of "lis pendens" it was necessary that the holders of the legal title to that real estate should have been made parties to the proceeding; this not having transpired, there is no room for applying the doctrine of "lis pendens" here.

As conceded in the brief of the defendants

"With respect to Thomas G. Hensey, the exception is so far correct that the evidence shows the loan to him was to the extent of \$400 made in October 1904,"

And this exception is sustained.

226 No merit is found in any of the other exceptions and the decree may be drawn accordingly.

WRIGHT.

Decree.

Filed May 13, 1909.

In the Supreme Court of the District of Columbia.

No. 24048.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

This cause coming on for hearing upon the exceptions of Charles H. Merillat and Mason N. Richardson, Trustees of the LeDroit Park Syndicate, to the Report of the Auditor filed in the above cause heretofore, to wit, on the 4th day of June, 1908, and having been

argued by the solicitors for the parties respectively, and having been duly considered, it is thereupon by the court, this 13th day of May, 1909, ordered, adjudged and decreed that, as to the first of the said exceptions, the report of the Auditor is erroneous in point of fact in his finding that the loan to Thomas G. Hensey was made prior to the date of the amendment to the bill in Equity Cause No. 24,084; but that, notwithstanding the erroneous finding in respect to the said fact, the court being of opinion that, for reasons set forth in its opinion filed in the cause, the said amendment did not constitute lis pendens, the said exceptions be, and the same hereby are, overruled,

that the said Auditor's Report be, and the same hereby is, ratified and confirmed, and that the surplus proceeds of the sale of the property described in the bill be paid over to the parties found by the said report entitled to receive the same or their solicitors of record.

From the foregoing decree, the complainants in open Court having noted an appeal to the Court of Appeals, the same was by the Court allowed, and the penalty of the bond for costs on appeal fixed at one hundred dollars, or a deposit of fifty dollars in cash in lieu of bond.

WRIGHT, *Justice.*

Memoranda.

1909, June 1.—Appeal bond approved and filed.

1909, June 18.—Time in which to file transcript of record in Court of Appeals extended to and including August 9th, 1909.

228

Docket Entries.

Supreme Court of the District of Columbia.

Parties.	Action.	Complainants' solicitor-.
Richardson, Charles W., Little, Joseph W., Cummings, Mary B., Bevard, W. A., Chittenden, F. H., Grice, Francis E., Richards, B., Heinz, Mary A., Esher, George C., Titecomb, Alice, Brittain, William H., Heinz, Paul E.,	Discovery, Receiver & Injunction.	C. H. Merillat, Mason N. Richardson, Eugene Carusi.
vs.		Defendants' solicitor-.
Hooker, Mellen C., Hensey, Melville D., Weeden, Daniel B. Hensey, Ruth B.		E. H. Thomas, C. T. Hendler, For E. G. Kimball. H. B. Moulton, For No. 2. J. B. Larner, For S. W. Woodward. Barnard & Johnson, For Louise Lowell.

Date.	Proceedings.	
1902.		
May 2.	Suggestion of death of Thomas B. Hensey and new parties named.	
" 3.	Petition of Cyrus Bussey for leave to intervene & Exhibit A.	
" "	Cause referred to Auditor (M. 78 p. 459) filed.	
" 8.	Appearance of Ruth B. Hensey & D. B. Weeden p. p. Order,	Filed.
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*
Meh. 12.	Order of Auditor for commission to issue	"
" "	Ruling of Auditor on objections reserved	"
Jun- 4.	Auditor's Report & Pkg. Vouchers & Pkg. Depos- tions (1 Book).	
" 15.	Auditor's report, Exceptions to by Trustees Merillat & Richardson.	
1909.		
A'pl 20.	Opinion of Court filed.	
May 13.	Auditor's Report confirmed, appeal noted, Bond \$100 (M. 83 p. —).	

229 *Directions to Clerk for Preparation of Transcript of Record.*

Filed Jun- 3, 1909.

In the Supreme Court of the District of Columbia, Holding an
Equity Court for Said District.

Equity. No. 24084.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al. and CYRUS BUSSEY, Intervening Pe-
titioner.

To John R. Young, Esq.:

Please make record for appeal, in matter of Cyrus Bussey, intervening petitioner, upon the following designation:

1. Petition of Cyrus Bussey, filed May 3, 1907.
2. Docket entries following: May 2, 1907; May 3, 1907; May 8, 1907; March 12, 1908; June 4, 1908; June 15, 1908; April 20, 1909; and May 13, 1909.
3. Suggestion of death of Thomas G. Hensey, filed May 2, 1907, and new parties.
4. Order referring petition of Cyrus Bussey to Auditor.
5. Copy of bill, and date of filing, in Equity, No. 26121, referred to in stipulation with petition of Cyrus Bussey above referred to.
6. Testimony taken before the Auditor upon this reference.

7. Exhibits with testimony as follows: Original bill in
230 Equity, No. 24084 (this cause), filed April 27, 1904, showing date of filing.

Motion for leave to amend bill, filed April 27, 1904.

Amendment to original bill in Equity, No. 24084, this cause, filed April 27, 1904, showing date of filing; also the order of the Court entered on the amendment directing it to be filed.

Decree in Equity, No. 24084, filed May 28, 1906 (this cause). Amended decree substituting Richardson as Trustee.

Copy of pages 398 and 400 of ledger entries of Thomas G. Hensey.

Copy of stock certificate of Thomas G. Hensey, with endorsements. (All other certificates in evidence to be omitted, they being identical, except as to dates and parties.) But give all endorsements of all certificates.

Deed from Melville D. Hensey to Bussey and Hensey, Trustees, Exhibit No. 1. See p. 2 of the testimony.

Note of Wallace Hills, of April 24, 1900, Exhibit No. 2. See p. 2 of the testimony.

Promissory note of Mellen C. Hooker, Exhibit No. 3. See page 2 of the testimony.

Promissory note of Thomas G. Hensey, of Oct. 27, 1904, for \$900, Exhibit No. 4. See p. 8 of the testimony.

Statement of March 7, 1906, Exhibit No. 5. See p. 13 of the testimony.

Report dated April 19, 1900, Exhibit No. 6. See p. 14, 18 and 38 of the testimony.

231 Collateral note of Leonard. See p. 26 and 27 of the testimony.

Evidence on pages 580 to 583; and pp. 722, 739, 747 to 753, in the cause No. 24084 original testimony. See this record of evidence p. 59. Give date of session when taken.

Hooker's stub-check, April 25, 1895. See testimony, p. 75.

Hooker's stub check, March 23, 1894, and Sept. 28, 1894.

Paul's receipt Oct. 12, 1904, for \$90. See testimony, p. 79.

Paul's receipt April 25, 1905, for \$90.00. See testimony, p. 79.

Paul's receipt May 3, 1893, for \$90.00. See testimony, p. 79.

Note of Melville D. Hensey for \$822. See testimony, p. 35.

Notes given by Hensey and Bussey, Trustees. See testimony, p. 82.

Notes of Mulville D. Hensey of October 2, 1891, including stamp on notes, for \$2500, of Riggs Bank, showing payment Oct. 1893.

Check of the Columbia Title Company, No. 7064. See testimony, p. 86.

Exhibit M. D. Hensey, No. 1, being paper in Thomas G. Hensey's handwriting. See testimony, p. 92.

Exhibit M. D. Hensey, No. 2, being paper in Thomas G. Hensey's handwriting. See testimony, p. 93.

232 Memorandum of payment of taxes. See testimony, p. 58.

Memoranda of condition of title. See testimony, p. 58.

8. Report of Auditor; or substituted copy.

9. Exceptions to report of Auditor.

10. Opinion of the Court.
11. Decree of the Court upon the petition of Cyrus Bussey.
12. Fact as to filing and approval of bond, and date.

CHAS. H. MERILLAT,
MASON N. RICHARDSON,
Attorneys for Trustees, Merillat & Richardson.

Service accepted and five days waived.

J. J. DARLINGTON,
Of Counsel for Bussey et al.
W. J. NEWTON,
For Blasland.

233 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 232, both inclusive to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in Equity Cause No. 24084, wherein Charles W. Richardson is Complainant and Ruth B. Hensey et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 6th day of August, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
By FRED. C. O'CONNELL,
Ass't Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2051. Chas. H. Merillat et al., trustees, appellant, vs. Cyrus Bussey, intervenor. Court of Appeals, District of Columbia. Filed Aug. 6, 1909. Henry W. Hodges, clerk.

RETURN TO WRIT OF CERTIORARI.

Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2051.

CHARLES H. MERILLAT AND MASON N. RICHARDSON,
TRUSTEES, APPELLANTS,

vs.

CYRUS BUSSEY, INTERVENER.

FILED OCTOBER 26, 1909.

Amended Bill of Complaint.

Filed August 20, 1903. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24084.

CHAS. W. RICHARDSON et al.
ag't
THOS. G. HENSEY et al.

Come now the complainants by their Attorney Charles H. Merillat and amend their bill of complaint as follows:

After paragraph twelve page twenty of the complainants' bill of complaint insert the following as a new paragraph:

12½. That on information and belief complainants allege that by means of the frauds herein referred to large sums of money have been illegally and wrongfully obtained by the defendants aforesaid Thos. G. Hensey, Mellen C. Hooker and Melville D. Hensey from your complainants and others similarly situated for whom they were trustees and agents, and have been and still are by them withheld

from your complainants and complainants on information and belief allege that all or a large part of the money thus wrongfully, and illegally obtained by said defendants as your complainants, trustees and agents were used in whole or in part by said defendants in the purchase of certain real estate and interests in real estate in the District of Columbia and title thereto taken in their own names and it now stands in their own name or names, the aforesaid real estate being more particularly described as follows:

The south thirty-two (32) feet of original lot eighteen in square 1110 in the City of Washington, District of Columbia, title thereto being taken in fee in the name of Mellen C. Hooker by conveyance from Charles E. Deimer by deed in fee dated April 18, 1893, and recorded March 29, 1894, in liber 1908, folio 28 et seq. of the land records of the District of Columbia.

Part of original lot 12 in block 7 in the Howard University's subdivision of the farm of John A. Smith known as Effingham Place, beginning at the southwest corner of said lot on Sumner Street, thence running north 20 feet, thence east 50 feet, thence south 20 feet, thence west 50 feet to the place of beginning, title to the same being taken in fee in the name of Mellen C. Hooker from Gordon P. Hooker by deed in fee dated June 13, 1894, and recorded February 8, 1896, in liber 2092 folio 299 et seq. of the land records of the District of Columbia.

A tract of land known as "Dry Meadows" in the County of Washington, District of Columbia, beginning for the same at a stone, marking corner of the late Charles R. Belt's land and running thence with 41 $\frac{3}{4}$ deg. east 57.84 perches to a stone, thence north 44 degrees, east 13.68 perches to a stone on Broad Branch Road, thence 15 $\frac{1}{2}$ degrees west 58.12 perches to Jones' line, thence north 60 degrees west 2.32 perches to a stone and place of beginning, containing 9.40 acres of land more or less title to the same being taken in the name of Thomas G. Hensey and Melville D. Hensey as joint tenants and in trust for contributors to the purchase price thereof by deed dated January 13, 1893 and recorded February 28, 1894, in liber 1891, folio 184 et seq. of the land records of the District of Columbia.

Lot No. 13 in Loomis' subdivision of square 65 as recorded in Book "W F" page 35 of the surveyor's office of the District of Columbia, title to the same being taken in the name of Thomas G. Hensey by deed in fee from Benjamin J. Edwards et ux. dated November 7, 1895, recorded November 15, 1895, in liber 2072 folio 42 et seq. of the land records of the District of Columbia, the same being subject to a deed of trust for \$2,000 dated August 28, 1899, and recorded in the liber 2428 folio 243 of the land records of the District of Columbia, made by Thomas G. Hensey et ux. to Blair and Howard trustees.

Lot 51 in square 520 in the City of Washington, District of Columbia, as per the recorded plat of Jesse D. Gibbs' subdivision of said square, title to the same being taken in the name of Thomas G. Hensey by deed in fee from Benjamin J. Edwards et ux. dated January 9, 1896, and recorded January 16, 1896, in liber 2098 folio 36, the same being subject to a certain deed in trust dated January 17,

1903, from Thomas G. Hensey et ux. to Charles E. Benjamin and Wm. H. Duncanson trustees to secure the payment of \$2,000 to the Perpetual Building Association.

All of lot 19 in section No. 3 of the Barry Farm Estate, according to the subdivision made by the Trustee thereof as recorded in the office of the surveyor of the District of Columbia, Book Levy Court No. 2 page 1, except that part of said lot conveyed by a deed from Lucy Stevenson to Catherine Tills dated April 18th, 1888, and recorded in Liber 1333 folio 425 et seq. of the land records of the District of Columbia, and title to which was taken in the name of Thomas G. Hensey by deed in fee from Fountain Peyton et ux. dated May 16, 1893, and recorded May 17, 1893, in liber 1818 folio 192 of the land records of the District of Columbia.

The interest held in the name of or for or on behalf of either, any or all of the defendants in part of a whole tract of land called Grassland and being designated as lot 11 on a sale map thereof made by Templeman and Shipley and described as follows: Beginning for said lot numbered 11 at the north easterly corner of the portion of Grassland which lies northwesterly of the County Road known as Loughborough Lane, thence running along the northwesterly boundary of said portion of Grassland south forty seven and three fourth degrees west thirty two and three fourths perches, to the northwesterly corner of lot ten as designated on said map, thence south forty degrees east and along the northeasterly boundary line of said lot ten one hundred and two and six tenths perches to the centre of said road; thence along the centre of said road north forty five and one fourth degrees east fifteen and one half perches, and north thirty one degrees east nineteen and one half perches to the northwesterly boundary line of said portion of Grassland: thence leaving said road and running along said boundary line north forty and three fourth degrees west 97 perches, to the beginning, containing 20 acres, 3 rods and 20 perches, except however the 9 acres 2 rods and 33 perches conveyed to Richard W. Carter on June 2, 1870, by deed recorded in liber 616 folio 268 and being the same parcel of land conveyed to Curtis Dangler on February 13, 1872, by deed recorded in liber 672 folio 211 and also the same conveyed by John C. O'Donoghue to said Arthur T. Goldsborough by deed dated on the 25th day of February 1890 and recorded in liber 1472 folio 129, excepting therefrom however the portion thereof released from the operation of said deed of trust by the said recited release dated March 3, 1894, and recorded in liber 1900 folio 80, title to the aforesaid tract being taken in the name of Thomas G. Hensey, Walter A. Brown and Alexander K. Phillips by deed in trust for the benefit of persons contributing the purchase money for said tract from Wm. A. Gordon and J. Holdsworth Gordon trustees dated October 30, 1897, and recorded November 27, 1897, in liber 2273 folio 151, the same being subject to a deed of trust dated November 11, 1897, from Hensey, Brown and Phillips trustees to Gordon and Nixon trustees to secure Albert Baker \$21,844.73 recorded November 27, 1897, liber 2273 folio 154 of the land records of the District of Columbia.

The interest held in the name of or for or on behalf of either, any or all of the defendants in lot 55 in Hensey and Hooker Trustees subdivision of Block 12 in Le Droit park as per plat recorded in Liber 12 folio 33 of the records of the office of the Surveyor of the District of Columbia, the same being taken in the name of Thos. G. Hensey and Mellen C. Hooker as trustees for the District Investment Company by deed dated July 6, 1901 and recorded July 11, 1901, in liber 2555 folio 361 of the land records of the District of Columbia.

The interests acquired, or for or on account of which payments have been made since January 14, 1893, by or for or on behalf of either, any or all of the defendants in property held in the name of Thomas G. Hensey and Mellen C. Hooker as trustees for the District Investment Company, which said property and interests your complainants are unable more particularly to describe but which said property and interests is well known to said Thomas G. Hensey and Mellen C. Hooker;

And complainants are advised and therefore aver that to the extent to which said money of your complainants and others similarly situated was thus used as aforesaid the said defendants Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, any, either or all of them, hold the aforesaid real estate, interests in real estate and property for your complainants and other shareholders similarly situated.

After prayer fourth page 25 of complainants' bill of complaint insert the following additional prayers:

Prayers.

Fourth and one quarter. That the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey be compelled to set forth and discover what interests they, either, any or all of them, have in the land and property described in paragraph 12½ of this bill of complaint and in the District Investment Company; when and how they acquired the same, what indebtedness there is on the same, and on each and every part thereof and by whom held, how and when they acquired their interests in the same and in each and every part thereof and whence came the money with which they acquired their interests in the same.

Four and one half. That the defendants be enjoined and restrained from disposing of any or all of their interests in the real estate or other property described in paragraph twelve of complainants' bill of complaint, or their interests in the District Investment Company pending this suit of and perpetually thereafter;

Four and three quarters. That a trustee may be appointed to sell the interests of the defendants and of each of them in the real estate or property described in paragraph twelve of complainants' bill of complaint and in the District Investment Company, and to hold the

same subject to further order of the court for the benefit of your complainants and other shareholders similarly situated.

JOSEPH W. LITTLE.

CHAS. H. MERILLAT,
EUGENE CARUSI,
MASON N. RICHARDSON,

Solicitors for Complainants.

Joseph W. Little being first duly sworn deposes and says: That he is one of the complainants in the above entitled cause, that he has read the above amendments to complainants' bill of complaint, that the facts therein stated of his own personal — are true and those stated upon information and belief he believes to be true.

JOSEPH W. LITTLE.

Subscribed and sworn to before me this 20th day of August, A. D. 1903.

[SEAL.]

WALTER C. BALDERSTON,
Notary Public, District of Columbia.

Service acknowledged this 20th day of August 1903.

A. B. DUVALL, *Sol'r.*

(Indorsed.)

Served copy of the within bill of complaint on Mellen C. Hooker personally Aug. 22, 1903.

AULICK PALMER, *Marshal.*
S.

Deposition of Mellen C. Hooker.

Filed Jul- 14, 1904.

WASHINGTON, D. C., *March 29th, 1904,*

Tuesday, at 3 o'clock p. m.

Met pursuant to adjournment as next hereinbefore noted at the same place, for the purpose of taking additional testimony for and on behalf of the defendant Hooker.

Present: Messrs. M. N. Richardson and C. H. Merillat for the complainants; John J. Weed, Esq., for defendant Hooker; A. B. Duvall, Esq., for defendant Thomas G. Hensey; Charles T. Handler, Esq., for certain parties defendant; E. L. Wilson, Esq., Examiner; Messrs. Thomas G. Hensey, Mellen C. Hooker and Melville Hensey, the original defendants in person, and witness.

* * * * *

MELLEN C. HOOKER, one of the defendants, was recalled for further cross-examination, and testified as follows:

By Mr. MERILLAT:

* * * * *

Q. Were you at that time indebted to him, and, if so, for what? A. I don't remember. It might have been a loan to him. I loaned him money several times.

Q. Would you have any papers that would show it if you did do such a thing? A. No, sir, I have not.

Q. I will ask you whether or not you gave checks on the Citizens National Bank in March 10th to Thomas G. Hensey for \$425. On March 15th to Thomas G. Hensey.

Mr. DUVALL: What year is that?

Mr. MERILLAT: In every instance of which I am reading the year is 1893. If there be any other year I will specifically designate it.

Q. Mr. Hooker, I will ask you to state whether or not you made the following Citizens National Bank checks: March 7th, Thomas G. Hensey, \$425.00; March 14th, Thomas G. Hensey, \$425.00; March 25th, Thomas G. Hensey, \$245.00; March 22nd, Thomas G. Hensey, \$1025.00; March 28th, Thomas G. Hensey, \$850.00; March 30th, Thomas G. Hensey, \$28.50; October 4th, Thomas G. Hensey, \$278.65; May 12th, Melville D. Hensey, \$60.00 and endorsed to Thomas G. Hensey and July 12th, 1893, to Hooker and Hensey, Trustees, \$240.00. Please state whether or not you gave those checks? A. I did.

Q. Please state which of those checks of Thomas G. Hensey were paid through the Riggs National Bank? A. Both of these appear to have been. They have Riggs stamp on them.

Q. For how much? A. \$850.00 and \$425.00 respectively.

Q. To Thomas G. Hensey, both were drawn? A. Yes, sir.

Q. I hand you all the checks drawn to Thomas G. Hensey and ask you to state for and on account of what these checks were given? A. To the best of my knowledge No. 2 for \$425.00 was given for a share of stock. No. 3 for \$425.00 was for a share of stock; No. 8 for \$245.00 I cannot remember what that was for. No. 10 for \$1025.00 was for stock; No. 14 for \$850.00 was for stock, I suppose; No. 15 for \$28.50, I don't know what that was for; No. 3 for \$278.65 appears to have been an assessment on the Ten Syndicate as there is a little memorandum on the northeast corner to that effect.

Q. That memorandum being in what words? A. Ten Syndicate.

Q. Now, Mr. Hooker, please state whether or not you have any independent recollection that these checks which you have said were given on account of shares of stock actually were given on account of shares of stock? A. I have no independent recollection of that, it is so long ago. It is to the best of my knowledge and belief.

Q. When did you first enter the Ten Syndicate A. I cannot state when I first entered that. It was after the organization sometime. I don't remember when.

Filed Oct. 22, 1909. J. R. Young, Clerk.

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas in a certain suit in said Supreme Court between Charles H. Merillat, et al. Complainants, and Thomas G. Hensey et al., defendants, which suit was removed to the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

“Pages 197 and 198 of the evidence and deposition of Mellen C. Hooker taken in Equity cause No. 24084 and the date of the session upon which such evidence was taken. The amendment to the bill filed in said Equity Cause No. 24084 on August 20, 1903.”

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissionss. to the extent above enumerated, you shall find to the said Court of Appeals, so that you have the same, together with this writ, before the said Court of Appeals forthwith.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 22d day of October, in the year of our Lord one thousand nine hundred and nine.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
 of the District of Columbia.*

[Endorsed:] Court of Appeals of the District of Columbia. No. 2051, October Term, 1909. Charles H. Merillat et al., Appellants, vs. Cyrus Bussey. Writ of Certiorari. Filed Oct. 22, 1909. J. R. Young, Clerk.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify, in obedience to the writ of Certiorari hereto attached and returned herewith, the foregoing to be true and correct copies of “Pages 197 and 198 of the evidence and deposition of Mellen C. Hooker taken in Equity cause No. 24084 and the date of the session upon which such evidence was taken. The amendment to the bill filed in said Equity Cause No. 24084 on August 20, 1903,” containing the words and figures omitted from the record

heretofore transmitted to the Court of Appeals of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 23rd day of October A. D., 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

[Endorsed:] No. 2051. Charles W. Richardson et al. ag't Thomas G. Hensey et al. Return to Writ of Certiorari. Court of Appeals, District of Columbia. Filed Oct. 26, 1909. Henry W. Hodges, Clerk.

